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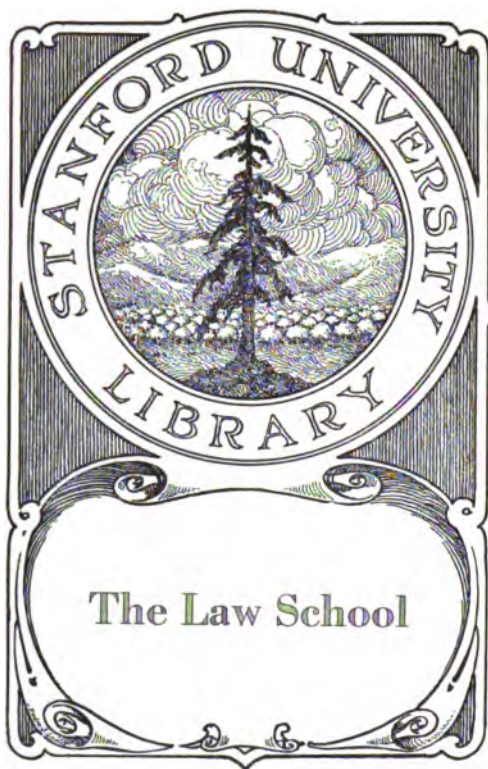
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B. & C.
STATUTES AT LARGE

OF THE

Revised
STATE OF NEW YORK

COMPRISING THE

REVISED STATUTES, AS THEY EXISTED ON THE 1ST DAY OF JULY, 1862,

AND ALL THE

GENERAL PUBLIC STATUTES THEN IN FORCE, WITH REFERENCES TO JUDICIAL DECISIONS, AND THE
MATERIAL NOTES OF THE REVISERS IN THEIR REPORT TO THE LEGISLATURE.

EDITED BY

JOHN W. EDMONDS.

IN FIVE VOLUMES.

VOLUME I.

CONTAINING THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE; AN
INTRODUCTION; AN ANALYSIS OF ALL THE STATUTES AND PART FIRST AND CHAP-
TERS 1, 2, 3 AND 4, OF PART SECOND OF THE REVISED-STATUTES.

PUBLISHED BY
WEARE O. LITTLE, LAW BOOKSELLER,
525 BROADWAY, ALBANY.
1863.

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By JOHN W. EDMONDS,
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L14801

JUL 13 1938

STATE OF NEW YORK, }
OFFICE OF THE SECRETARY OF STATE, } ss.

I, HORATIO BALLARD, Secretary of State, certify that so much of the matter contained in the text of this edition of the Revised Statutes as purports to be a copy thereof, is a correct transcript of the text of the Revised Statutes, as originally published under the authority of the State, except such typographical errors in the original as have been corrected in the copy, and except such parts as have been altered by acts of the legislature, and that with respect to such parts it conforms to the acts by which such alterations have been made.

IN WITNESS WHEREOF, I have hereto set my signature, at the city of Albany, the 25th day of June, 1863.

HORATIO BALLARD,
Secretary of State.

W. H. PARSONS & COMPANY, PUBLISHERS,

WEEK, PARSONS & COMPANY, PUBLISHERS,

PRINTERS AND STEREOTYPERS,

ALBANY, N. Y.

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INTRODUCTION.

I CAN hardly tell what first prompted me to engage in the work which I have now completed and send forth among my brethren of the profession.

It certainly was not the prospect of pecuniary reward, for I have no hope that I shall ever realize from it anything like an adequate remuneration for the immense labor it has cost — labor involving the perusal of some 45,000 pages of Statute law, about one half of which I have gone over eight or ten times, and the examination of some 25,000 reported cases — half of which I have had to examine twice over.

It as certainly was not the expectation of applause, for I fully realize, in respect to my compilation, Dr. JOHNSON'S remark about his — "Every other author may aspire to praise, the Lexicographer can only hope to escape reproach."

But I suspect it had its origin mostly in my own conviction — long entertained — of the justice of BACON'S remark, that "every man is a debtor to his profession, from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves, by way of amends, to be a help and ornament thereunto."

In my profession I have been so much retarded by the necessity of looking for a statute through some fifty volumes, and most of them having most slovenly indexes, and in searching for adjudications upon them through some two hundred volumes of reported cases, that it seemed to me that I could render to my brethren of the profession in this State, no more acceptable service, than a condensation of the fifty volumes of Statute law into four or five, and a reference to all the adjudged cases on those Statutes. I have hoped that I could thus save to the profession much toil — by

making a labor-saving machine — that might be welcome because of its power of economizing time and toil.

This is the most that I have aimed at, and if I have succeeded in that purpose I shall be well content that my labor has not been in vain.

OBJECT OF THE COMPILATION.

From the inauguration of our Revised Statutes — now over thirty years ago — it has been the purpose, as avowed by the Revisers, to present, massed together, “a full and accurate view of the whole existing Statute law of a general nature.”

This purpose has been attempted to be carried out, in all the subsequent editions, by incorporating into the body of the Revised Statutes, not only all the alterations made in them by the Legislature, but all general and independent legislation.

In the first edition, published in 1829, nothing was inserted in the first two volumes but the Revision as adopted by the Legislature except the laws of Congress in relation to the militia.

The second edition, published by the Revisers in 1836, professed to be the Revised Statutes “as altered by the Legislature, including the statutory provisions of a general nature, passed from 1828 to 1835 inclusive.”

The third edition, published in 1846 — the fourth in 1852, and the fifth in 1859, all followed the example of the second edition in incorporating into the text of the Revised Statutes, or as distinct titles or articles, “all laws subsequently passed which were of general operation.”

It is singular that, while during the first thirty years of this century, we had three revisions of our Statutes, viz. : in 1801, 1813 and 1830, — in the next thirty years we had none; yet in this latter period more general and important alterations have been made in our civil polity than in the former.

The abolition of the Court of Chancery, the remodeling of our whole judicial system, the adoption of a Code of Practice, the radical changes wrought by the Constitution of 1846, and which have caused the discussion in our courts within the last fifteen years, of more constitutional questions than were known in the whole of our previous history, and the free legislation of over thirty years have all tended to render a revision more necessary than ever.

No revision being authorized during this later period, the effort has been to attain the same object in the several editions of the Revised Statutes. But that could be done very imperfectly without the aid of legislative power, and the difficulty has been every year growing greater.

Aside from the increased bulk of the volumes, confusion and uncertainty must necessarily grow out of unauthorized attempts to add to the Revised Statutes what the Legislature have not enacted as such.

A few instances will illustrate this. The Revisers in their second edition incorporated into the text, the act of 1831 to abolish imprisonment for debt. For that purpose, they inserted thirty-one of the forty-eight sections of that act as an additional article to Title 1 of Chapter 5 of Part II: one of the sections as part of § 228 of Article 13, Title 4, Chapter 2, Part III: fourteen of the sections as additions after § 228 of the same article, while two of the sections, 44 and 45 and part of 48 are not, that I can find, inserted anywhere.

This is virtually a revision of the Act of 1831, and being done without legislative power, it is necessarily imperfect; and one mischief arising from this I have found in a subsequent Statute, which intended to repeal a portion of that Act, but which applied its repealing power to a section of the Revised Statutes, and not to a section of the Act of 1831. By a subsequent act that error was corrected.

I have found several instances in which the Legislature has been thus misled. Finding, what is in fact an independent enactment, incorporated into some one of the editions of the Revised Statutes, laws have been passed repealing it as part of the Revised Statutes, but leaving it to stand untouched as a law by itself.

This gives rise to several troublesome questions. One is, how far the original, independent enactment is affected by this subsequent legislation, and another is, how far the subsequent recognition of the independent enactment as part of the Revised Statutes does actually incorporate it into them.

Those are questions for the Courts to dispose of, and not for me as an Editor.

Part I, Ch. 8, Tit. 3, Art. 1, is an apt illustration of the additions to the original Revised Statutes, which have been made without

legislative authority. The original article contained eighteen sections. As published by the Revisers in their second edition it contained twenty-eight sections, the additional ten being enactments in 1835, 1833 and 1831, which do indeed relate to the same topic, but which were independent enactments and nowhere made a part of the Revised Statutes.

In the third edition the article has twenty-eight sections, including three passed in 1831, two in 1833, one in 1835, one in 1841, one in 1842 and two in 1843.

In the fourth edition, the article contains twenty-six sections, including four sections passed as independent enactments in 1841, 1842, and 1843, and omitting six of those added as above mentioned, in the second edition. So that no two of the editions agree, and all differ from the first edition. And all this without legislative authority.

Then the number and location of the added sections are different in the editions. What are sections 21, 22 and 23, in the second, are sections 22, 23 and 24, in the third, and are 23, 24 and 25, in the fourth; and in the fourth they come after original section 18, while in the second and third they precede it.

In the second edition there is added to this Title as Article Fourth, what is said to be "Laws of 1831, Chap. 310, § 2 to 9," and "Laws of 1830, Chap. 242, § 3."

In the third edition there is also added a fourth article consisting of the same seven sections from the Act of 1831 (giving it correctly as Chap. 320), and omitting the enactment of 1830, and in the fourth and fifth editions the syllabus at the head of Title III, professes to insert the same fourth article. No such article is given, however, but the same sections of the Act of 1831 are given afterwards in connection with other independent enactments, passed in 1840, (and in the fifth edition, with a section added passed in 1857) as a new and added Title IX—the Chapter of the Revised Statutes proper containing in fact only eight titles.*

Another mischief of the liberties thus taken with legislative enactments, is illustrated by this simple statement.

Chap. 8 of the Laws of 1832, contained four sections which are none of them made parts of the Revised Statutes. Yet in the

*The whole title properly contains 41 sections, but it is made to contain 49 sections in the 4th and 5th editions, 51 sections in the 3d, and 58 sections in the 2d—none of those left out having been repealed.

second edition, section one of that Act, is incorporated into the Revised Statutes as § 3, Tit. 3, Chap. IX, Part I; section two is incorporated as § 37 of Art. 1, Title 1, Chap. 15, of Part I: and sections three and four are incorporated as § 30 and § 31 of the same article.

And what adds to the incongruity, is the fact that the first section which requires a certain thing to be done within sixty days after the passage of the Act, viz. : January 25, 1832, is incorporated into the Revised Statutes, which passed on the 3d of December, 1827, and took effect on the 1st January, 1828, so that the Legislature are made to enact in January, 1832, that a certain thing shall, at a future time, be done on a day already passed four years ago!

These incongruities I found myself compelled to fall into, the moment I should attempt to take the liberty of altering the actual enactments of the Legislature, and I became satisfied that this purpose of having what was termed the Revised Statutes contain all of our Statute law, could never be effectually executed save by the legislative power.

The Revisers as early as their second edition felt the difficulty of the attempted task, and that which was merely difficult in six years after the revision went into effect, has become well nigh impossible after a lapse of over thirty years.

At all events I found that I should involve myself in great confusion by attempting it without legislative power.

The plan therefore which I have adopted is different from that of any of the preceding editions.

I aim at the attainment of the same purpose, but I do that by giving first the Revised Statutes with scrupulous accuracy, just as the Legislature has at this moment left them, and next and in separate volumes, all the general laws of the State now in force.

Those general laws I have grouped together, so that all the acts on any given topic will be found together, and the topics arranged according to the order adopted in the Revision.

For example, in the Revised Statutes the topics are arranged in the order of

TAXES.

PUBLIC HEALTH.

PUBLIC INSTRUCTION.

I.—B.

HIGHWAYS.

TRADE.

CORPORATIONS.

INTERNAL POLICE, &c., &c.

I adopt the same order in my subsequent volumes and group the acts together: for instance, under the head of "Corporations" will be found all general laws now existing on that topic; and under each head I arrange the several Statutes in chronological order, excepting only in one or two instances, where the Legislature has altered that order.

CODIFICATION.

The idea of codifying the law is very popular with our people at large and even with lawyers.

A "short cut" to knowledge will always be as acceptable to the Doctors of the Law, as it ever has been to other classes.

Hence the Code Justinian and the Code Napoleon have been so highly regarded.

Hence our Constitution of 1846 provided for two codifications, one of the Practice and one of the General Law.

And hence, while our Revisions of 1801 and 1813 had been mere compilations and simplifications of the scattered fragments of Statute Law, the Revision of 1830 had the more ambitious aim of codification.

That work, though performed with admirable learning and talent, failed in its great aim of codification.

So our Code of Practice, with all its manifold merits, failed in the same purpose.

The reason of this seems to me plain.

A Code contains within itself no element of reproduction, but on the other hand involves the idea of permanence, stability, unchangeableness.

It is what Kossuth aptly called a "system of cast iron," and is at war with that elasticity which has ever commended the Common Law as a system peculiarly adapted to a free people. Codification may do in an arbitrary monarchy, where the necessity of government demands that the people must stand still. It can hardly be adopted elsewhere without becoming an instrument of stealing power from the many to the few.

When Solon prepared his Code of Laws for Athens, he made the people swear that they would make no alterations in it for ten years.

When Justinian proclaimed his Code, he prohibited the civilians of his time and those of all future ages from writing any commentary on it.

Yet with all these appliances, stability could not be attained.

Montesquieu says that "greater changes took place in a few years in the laws and jurisprudence of Justinian than in the 300 years of the French monarchy immediately preceding his time." And within six years after the promulgation of Solon's Code, Pisistratus usurped the power of the State and continued the usurpation in spite of all of Solon's efforts and Solon's laws.

It has been so with our Revised Statutes. During the 35 years that have elapsed since they were enacted, I do not know that a year has elapsed without some alteration in them. So that what in the first edition filled some 2400 pages, has swelled up to over 3600 in the fifth.

Our Code of Practice, which in 1848 was 72 pages, has received 137 pages of amendments in 13 years, and has given rise to such an immense mass of litigation that it has been well said that if the Legislature had delegated to the lawyers the power of concocting a scheme for the advancement of their own interest, no better plan than the Code could have been devised for the attainment of that end.

The discretionary power vested in the Judges by our code of Practice has been appalling to all who venerate certainty or learning in the law, and has contributed largely towards bringing our judicial system into disrepute.

The attempt at codification inaugurated by the Revisers was continued by them in their 2d and 3d Editions and by subsequent editors in the 4th and 5th Editions, until with one accord the profession and the public demand a change.

In preparing the work now being ushered to the world, I have listened to the admonition flowing from these facts.

How could legislation be expected to stand still among a people who in 30 years increased in numbers from 2,000,000 to 4,000,000, and whose wealth within the same period augmented from \$200,000,000 to \$1,400,000,000; where the canal tolls have swelled up from \$1,000,000 to \$5,000,000, and the Bank circulation from

\$10,000,000 to \$28,000,000 — a people who were driven onward in their progress mentally, morally and physically, with railroad speed, by the combined forces of the mariner's compass, the art of printing, the use of steam, the magnetic telegraph, &c., &c., &c.!

The language of the German jurist, Friedrich Karl Von Savigny, is as true of us as it was but a few years ago of his country: "We are not prepared and equipped for the great, important and difficult task of codification."

I have therefore not aimed, even indirectly, at that lofty work; but contented myself with the humbler task of compilation only.

My purpose has been to give the laws as I find them to exist at the present moment, merely arranging them so as to be conveniently referred to and affording the necessary facilities for ascertaining what alterations have been made by legislation and what interpretation has been established by adjudication.

The labor which the task has cost me will be so much saved to others, and in that will consist the chief merit of my work.

NUMBERING THE SECTIONS, &c.

The Legislature in permitting any one to publish the Revised Statutes was careful to insist that the original paging should be preserved, but was silent as to the division of the work into Volumes, Parts, Chapters, Titles, Articles, Sections, and subdivisions. Were these matters or any of them left free to publishers to do with as they pleased? Apparently not, for when in 1830 a new Edition was contemplated, the Legislature directed the Revisers to incorporate into the original text, the amendments then made and authorized the Secretary of State to make the necessary alterations in the numbering of the sections.

The Revisers in their Second Edition went far beyond the authority thus given and every subsequent Edition has taken equal liberties with the numbering of the sections, so that in some instances the same sections are numbered differently in each one of the editions.

The confusion and inconvenience, arising from this cause, are apparent to every one.

It seems to me that the Legislature has established a standard for all the divisions of the work as much as it has for the body of its enactments.

To that standard I have adhered with the same tenacity that I have to my purpose of not taking any liberties with the text.

The practice hitherto, when the Legislature has interposed a section between two others or has repealed a section, has been to alter the numbering of all the succeeding sections of the article or title.

My plan is different. If the new sections come in, for instance between sections 21 and 22, I have two sections No. 22, one of them known as 22^a and the other as 22^b. If sections are repealed, to wit, sections 21 and 22, the numbering goes on from section 20 to section 23, leaving a vacancy, but not disturbing the numbers of the other sections, either before or after the missing numbers.

So if a whole Article, Title or Chapter is repealed, no alteration is made in the numbering of the other Articles, Titles or Chapters.

Thus the alterations are carried out with the least possible disturbance to other parts.

CITATION OF AUTHORITIES.

To aid the profession the endeavor has been made to cite every case to be found in our reports bearing upon the Statutes, and not merely leading cases.

To the Constitution of the United States is appended a citation of not merely cases in the Federal Courts, but of cases in all the State Courts.

The citations to the State Constitution and the Statutes are confined to the decisions in our State.

And I have preceded the whole work with a "Table of References" calculated to explain my abbreviations of the Reports.

I can hardly hope that I have attained entire accuracy in this. Over 4,000 cases being cited, the danger of error is very great.

But there is another cause more fraught with danger of error than this, and that is, the manner in which the opinions of our Courts refer to the Statutes.

Some of the Judges are particular to refer to the marginal pages, others again refer to the Edition that happens to lie before them, and in some instances I have found several different editions referred to in the same opinion. So that not only is a lawyer obliged to own all five of the editions, in order to understand the decisions, but he will find it very difficult and sometimes actually

impracticable to ascertain to what particular section the decision referred.

I cannot therefore hope that I have in all cases attached the cited case to the proper section. I can only hope that the great pains that have been taken to be accurate has rendered the number of errors in this respect rather small.

OMISSIONS.

Some omissions will be found in the first two volumes that would seem inexcusable, if no explanation was given.

Thus, it has not been unfrequent for the Legislature to pass an Act entitled "An Act to amend Art. — Title — of Chapter — of the — Part of the Revised Statutes," and then make an enactment that has no reference whatever to the Revised Statutes except that it is upon a subject touched upon in the Article named in the title of the Act.

Now, as the title is no part of the Statute I could not incorporate the latter into the text of the Revised Statutes without taking that liberty with legislative enactment which throughout I have endeavored to avoid.

Then again — there are some instances where a new Statute is intended as an entire substitute for a particular article or title of the Revised Statutes, yet by mistake the Legislature has repealed another article or title.

Thus, where the new act is a substitute for Title 4 of Chapter 2 and Title 4 of Chapter 3 is repealed.

So too where a substitute has been enacted for a whole title, the proper title repealed, and, by some oversight, the new act is not made a part of the Revised Statutes. Such is the case with the census law, and the election law, and with some others.

The duty of an editor to leave them out of the text of the Revised Statutes proper would seem plain enough, but a difficulty is created by the fact that having found their way into some of the Editions of the Revised Statutes, subsequent enactments have recognized them as belonging there.

Within the thirty-two years which have elapsed since the Revised Statutes went into effect, acts have been passed that do, in fact, but not in terms, repeal some parts — some that repeal in terms and

enact a substitute which is not made a part of the Revised Statutes—some that repeal what “is inconsistent” with the new enactment—some where the Revised Statutes are altered as to certain localities, extended to some new place or some old place exempted from their operation—many instances where by subsequent events portions are rendered inoperative—some where the titles say the enactments are in addition to or amendatory of the Revised Statutes, yet those Statutes are not even alluded to in the enactment—and frequently, alterations are made without any reference to the former law.

These circumstances presented to me the alternative of either usurping the province of the Legislature and acting the part of a Reviser, for which I had no authority, or, giving the enactments precisely as I found them.

The latter, being the course I have marked out for myself, has been pursued; but without injury to the reader, for those enactments which are omitted from the Revised Statutes proper, will be found among the general laws, in the subsequent volumes. And the present publication gives the Statutes which it purports to contain, precisely as the Legislature has enacted them and not otherwise.

To facilitate the use of these volumes, I have endeavored to give, at the proper place in the Revised Statutes, a reference to all the subsequent enactments which affect the same topic.

Such of those subsequent enactments as are yet in force and are not merely local in their application, will be found in the subsequent volumes, arranged under the topics to which they belong.

THE REVISERS' NOTES.

In the original report of the Revisers to the Legislature they incorporated notes setting forth their reasons for the enactments proposed by them. Those notes were characterized by great learning and research and were highly valued by the Legislature and by the profession. So much so indeed, that the Revisers in their second Edition felt themselves compelled to publish them, and I have always regarded the second Edition as the most valuable of all for that reason among others.

The lawyers would cite those notes as evidence of what the Statutes meant and, strange as it may appear! it is nevertheless

true, that the Courts set their faces against this citation. They were impelled to that, by the consideration, often expressed by them, "that though the Revisers so intended, the Legislature might have had a different intent."

The profession however, have all along felt that in those notes, they have often found, in the language of Lord COKE: "The very lock and key to set open the windows of the Statute," and they have persisted in referring to them until at length in the lapse of time, the Courts have ceased their repugnance to hearing them quoted, and it has become quite common for even our Judges to refer to them.

I cannot persuade myself that this is not right. I have therefore inserted in this compilation such of the notes as would be calculated, in the eye of good sense, to throw light on the true meaning of the Statutes.

RULES OF INTERPRETATION.

In the same spirit, which prompts me to give the Revisers' notes as a means of getting at the meaning of the Statutes, I am prompted to go a step further and give a brief synopsis of some of the leading rules of Interpretation which are well established in our Courts.

To the profession, who are well instructed on that subject or who have in their libraries the books from which they can learn the canons of construction, my synopsis may be of little value.

But there is a large class of inferior magistrates and local officers, to whom it may be serviceable and it is for them that I have prepared it and to their attention I commend it, in the hope that I may be able to aid them in the performance of duties, which though humble and obscure in their operation, do, nevertheless, largely affect the peace, good order and well being of the whole people.

Any one can readily appreciate the value of this consideration who will pause long enough to imagine what would be our condition, if we should strike from existence the power now wielded by Justices of the Peace and our numerous town and county officers, or if we should be doomed to see it wielded by corrupt or weak or ignorant functionaries.

RULES.

1. The primary object is to discover the true intention of the law and whenever that can be clearly ascertained, it must govern,

whatever the language and whatever the opinion of its wisdom or policy.

2. A matter clearly within the intention of the Act is within its scope, for the intention prevails over the literal sense of the words used, and that which is within the intention is as clearly within an act as if within its very letter, and that which is within the letter and not within the intention is not in the act.

3. To get at the intention of an Act, recourse must first be had to its words and next to the occasion and necessity of its enactment.

4. The true inquiry is: 1. What was the former law? 2. What was the mischief or defect to be remedied? 3. What was the remedy proposed? and, 4. The reason of that remedy?

5. The effort must always be to suppress the mischief and to advance the remedy.

6. The mischief or the defect intended to be remedied, may be ascertained from the act itself or from extrinsic circumstances, but the remedy must be ascertained only from the act itself.

7. The intention of an act is not to be presumed, but is to be gathered from its language, and if that can be done, the policy of the enactment is not to be regarded.

8. Words in an act are to be construed in their ordinary and familiar signification as in general and popular use; except where terms of art are used, and then they are to be received in their technical sense.

9. Where the meaning of the words used is under inquiry, regard must be had to the subject matter, in respect to which the words are used.

10. General words may be qualified by subsequent special clauses.

11. General words are to be taken as distributive where the sense requires it and in furtherance of the intention.

12. The collocation of words is often material to be attended to. If they are at the beginning of a sentence, they may govern the whole. If at the end they do refer to the whole. If in the middle and sensibly applying to a particular branch, they cannot be extended to that which follows.

13. Words of permission are obligatory — (for instance, “may” means “shall,”) whenever the enactment is for the sake of justice or for the public benefit.

14. The word "and" in an act is generally conjunctive, but may be read in the disjunctive as "or," when such is the clear intention.

15. Relative words, such as "aforesaid," "said," "such," "in like manner," &c., are to be construed as limited to matters precedent, and as carrying forward the sense and extending its operation.

16. When in the same Statute, different words are used, though synonymous, or nearly so, a different meaning is to be understood.

17. So the omission of a clause previously used is to be understood as done purposely.

18. The principles of the common law are never to be lost sight of. Their abrogation is never to be presumed, but to be tolerated only when the enactment is clear and specific; the intendment being that the common law was to be altered no further than the case absolutely required.

19. When an act alters the common law, the meaning shall not be strained beyond the words, except in cases of public utility, when the aim of the act appears to be larger than the enacting words.

20. Whenever the words used are general and declaratory of the common law, they extend beyond the persons and things named in the act and embrace all persons and things within the purview of the act.

21. All parts of an act are to be construed together, and are to receive such interpretation as will enable all its clauses to be operative.

22. All acts on the same subject, whenever passed, are, what is termed, *in pari materia*, are to be construed as if constituting one act, and are to be so interpreted that all of them and all their clauses may be operative.

23. An act repeals all prior enactments on the same matter, so far as they are inconsistent with each other, excepting only, that where it is the manifest intention that a subsequent act shall not control a former, it shall not do so, though the words strictly and grammatically would repeal it.

24. When a repealing act expires, the original act is revived.

25. The repeal of a repealing act revives the act first repealed unless the contrary is clearly manifest.

26. Contemporary expositions are to be regarded in getting at

the meaning of an Act and have force in proportion to the universality with which they have prevailed and the length of time during which they have continued without question.

27. When the meaning of an act is doubtful the consequences may be considered, but when the meaning is plain, no consequences are to be regarded in the interpretation.

28. Punctuation is not to be regarded, for it is generally the work of the printer and not of the legislator.

29. Where the reason of an enactment is general, its application is so, though its provisions are special.

30. The title and the preamble are no part of an act; they cannot limit or restrict its operation, but can be referred to only as a means of getting at its true meaning. And it is the same with any words introductory to the enacting clause.

31. Where an act has a general intent and a particular intent, which are in conflict, the particular intent does not override the general intent, but is an exception to it.

32. A proviso is dependent on a precedent and not on a subsequent clause unless the manifest intention is otherwise.

33. A saving clause may restrain or qualify an enactment but can never overturn it. If directly repugnant, the saving clause is to be rejected.

34. Acts relating to private corporations and passed on their application, are in the nature of contracts and cannot be impaired by any subsequent legislation without consent, or unless the right so to do has been expressly reserved. Our constitution reserves that power in the case of all corporations created since 1846.

35. When a right is given by an act, the remedy necessary to enforce that right is also given.

36. When a form is given in an act it must be strictly followed.

37. When power is given to hear and determine, the power to summon the party to appear and stand trial is also given.

38. When a power is given to take an examination, an examination on oath is meant, unless otherwise expressed, and the power to bind the person over, conveys the power to commit in case of failure to give bonds.

39. When words restrictive are used, they exclude all persons and things not named.

40. The comparison of one act with another passed by the same legislator, or upon the same subject or relating expressly to the same point, may be made to help the interpretation or fitly to expound the meaning.

41. The rights of the Government are not to be taken away by ambiguous words, but only by clear and unequivocal language.

42. Acts are sometimes peremptory and sometimes directory only. When they are peremptory, anything done not in compliance with them is absolutely void. When they are directory, such violent consequences of a departure from them do not follow.

It is not easy to lay down a general rule that will clearly define the distinction between the two. But this much may be asserted, that negative words make an act peremptory, and so affirmative words may, if they are absolute, explicit and peremptory, and show that no discretion is intended to be given.

43. Certain acts are to be liberally construed, so as to embrace within their action all cases within their equity or spirit, and others are to be strictly construed so as to embrace only those which are within the literal meaning.

The following are to be liberally construed :

All remedial acts, so as to advance the remedy.

All having the general welfare in view, so as to attain the end proposed.

Acts aiming at the expedition of justice or the prevention of litigation.

Acts to prevent frauds.

The following are to be strictly construed :

Acts to discharge a debtor from his debts or the consequences of them.

Acts cutting down, abridging or restraining written instruments.

Acts conferring new jurisdiction unknown to the common law, including herein all cases of summary proceedings.

Acts conferring new powers affecting property or granting exemptions from burdens generally imposed.

Acts taking private property.

Acts imposing taxes.

Acts taking away jury trials.

Acts abridging personal liberty.

Acts imposing penalties and forfeitures.

Acts imposing costs.

Acts taking away the common law.

Acts in explanation of other enactments.

44. When an act is both remedial and penal, it may be construed liberally as to one part and strictly as to the other.

45. A penalty implies a prohibition and the thing is unlawful, though no prohibitory words are used.

46. An act in contravention of the Constitution is absolutely void. In other cases of defective or imperfect acts, they are void only in part and are to be sustained in all those parts which are not defective or imperfect.

CONCLUSION.

With these prefatory remarks which give the reasons for the course I have pursued in this Edition, I state briefly my general plan :

1. To embrace the whole of the Revised Statutes in two volumes divided as in the first edition, and in conformity with the original paging.

2. To accomplish the purpose avowed by the Revisers in their first Edition and aimed at in all the succeeding editions, namely, to "exhibit the whole written law of the State" — by adding subsequent volumes to contain all general laws not incorporated into the Revised Statutes.

3. To give the Revised Statutes precisely as the Legislature has made them, adding to the original first Edition only what the Legislature has expressly and in terms enacted as amendments and leaving out only what has been expressly and in terms repealed.

4. To take no notice of constructive or implied repeals, as not being within my province, but peculiarly within that of the courts.

5. To retain the divisions as established by the Legislature, and for that purpose preserve not merely the original paging, but the original numbering of the sections and giving no other numbers but the original, making room for new sections by duplicating the numbers and distinguishing the duplicates by letters.

6. To have an index to each constitution immediately preceding the instrument; an index to the Revised Statutes at the end of the

second volume, and an index to the general laws at the end of the last volume.

7. To refer, in the appropriate place, to every reported case bearing upon the Constitutions or the Statutes, so that at the end of each section the reader will find a reference to every case calculated to show the interpretation put upon it by the courts.

8. To add the notes of the Revisers as important and trustworthy aids in enabling us to attain the meaning of enactments, especially when made in the very language recommended by them.

In calling my work *Statutes at Large*, I entertain the purpose of publishing every year, directly after the adjournment of the Legislature, all the Statutes then enacted which may be of a general and permanent character, and that in such form as will enable them every third, fourth or fifth year, as the case may be, to be bound together in a form corresponding with this work.

J. W. EDMONDS

New York, July 1, 1862.

TABLE OF REFERENCES

TO THE REPORTS CITED.

[The Editor having cited a large number of cases as bearing on the Statutes—over 4,000 in number—and brevity of citation having been a necessity with him, he annexes this table to aid the profession in their examination of his authorities.]

Ab.,	Abbott's Reports.	Dal.,	Dallas' Reports.
Aik.,	Aiken's Reports.	D.,	Denio's Reports.
Al.,	Alabama Reports.	Doug.,	Douglass Reports.
Am. L. J., . .	American Law Journal.	Du.,	Duer's Superior Court Rep.
Am. L. R., . .	American Law Register.	Dutch.,	Dutcher's Reports.
Ark.,	Arkansas Reports.		
Bald.,	Baldwin's Reports.	E. D. S., . . .	E. D. Smith's Reports.
B.,	Barbour's Reports.	Ed.,	Edwards' Reports.
R. Ch.,	Barbour's Chancery Rep.	Eng.,	English's Reports.
Barr.,	Barr's Reports.		
R. Mon., . . .	Ben. Monroe's Reports.	Fairf.,	Fairfield's Reports.
Bibb.,	Bibb's Reports.	Fl.,	Florida Reports.
Binn.,	Binney's Reports.	Fost.,	Foster's Reports.
Blackf., . . .	Blackford's Reports.		
Blatch., . . .	Blatchford's Reports.	Gall.,	Gallison's Reports.
Blount Tr., .	Blount's Trial.	Geo.,	Georgia Reports.
Bos.,	Bosworth's Reports.	Gil.,	Gill's Reports.
Brad.,	Bradford's Reports.	G. & J., . . .	Gill & Johnson's Reports.
Bre.,	Breese's Reports.	Gilm.,	Gilmore's Reports.
Brock., . . .	Brockenbrough's Reports.	Gilp.,	Gilpin's Reports.
Burr Tr., . . .	Burr's Trial.	Grat.,	Grattan's Reports.
		Gray.,	Gray's Reports.
		Greenl.,	Greenleaf's Reports.
Cal.,	California Reports.		
Call.,	Call's Cases.	Ham.,	Hammond's Reports.
Cart.,	Carter's Reports.	Harp.,	Harper's Reports.
Cha.,	Chandler's Reports.	Harr.,	Harrington's Reports.
Chip.,	Chipman's Reports.	Har.,	Harris' Reports.
Cl. Ch., . . .	Clark's Chancery Reports.	Hayw.,	Haywood's Reports.
Conn.,	Connecticut Reports.	H.,	Hill's N. Y. Reports.
Const. R., . .	Constitutional Reports.	Hill, S. O., . .	Hill's S. Car. Reports.
Cow.,	Cowen's Reports.	H. & D., . . .	Hill & Denio's Reports.
Crabbe., . . .	Crabbe's Reports.	Hilt.,	Hilton's Reports.
Cr.,	Cranch's Reports.	Hop.,	Hopkin's Reports.
Curt.,	Curtiss' Reports.	How. M., . . .	Howard's Mississippi Rep.
Cush.,	Cushing's Reports.	How. P. R., .	Howard's Practice Reports.

- How., Howard's U. S. Reports.
 Hum., Humphrey's Reports.
 Il., Illinois Reports.
 In., Indiana Reports.
 Ire., Iredell's Reports.
 J. Ca., Johnson's Cases.
 J. C. R., ... Johnson's Chancery Reports.
 Jo., Johnson's Decisions.
 J. R., Johnson's Reports.
 Jon., Jones' Reports.
 Law R., ... Law Reporter.
 Lit., Littell's Reports.
 La., Louisiana Reports.
 Mai., Maine Reports.
 Man., Manning's Reports.
 J. J. M., ... J. J. Marshall's Reports.
 Md., Maryland Reports.
 Mass., Massachusetts Reports.
 McL., McLean's Reports.
 McM., McMullen's Reports.
 Met., Metcalf's Reports.
 Miss., Mississippi Reports.
 Mi., Missouri Reports.
 Mon., Monroe's Reports.
 B. Mon., ... Ben. Monroe's Reports.
 Mor., Morris' Reports.
 Munf., Munford's Reports.
 N. H., New Hampshire Reports.
 N. Y., New York Reports.
 Oh., Ohio Reports.
 Op., Opinions of Attorney-General.
 Pai., Paige's Reports.
 P. C. R., ... Parker's Criminal Reports.
 Pa., Payne's Reports.
 Peck, Peck's Reports.
 Peck's Tr., . Peck's Trial.
 P. L. J., ... Pennsylvania Law Journal.
 Penn., Pennsylvania Reports.
 Pet. Ad., ... Peters' Admiralty Reports.
 *Pet., Peters' Reports.
 Pick., Pickering's Reports.
 Port., Porter's Reports.
 Ran., Randolph's Reports.
 Raw., Rawle's Reports.
 R., Redington Reports.
 Rh. I., Rhode Island Reports.
 Rich., Richardson's Reports.
 Root, Root's Reports.
 S. Ch., Sanford's Chancery Reports.
 S. S. C., ... Sanford's Sup. Court Reports.
 S. & R., ... Sergeant & Rawle's Reports.
 Shep., Shepley's Reports.
 S. & M., ... Smedes & Marshall's Reports.
 Smith, Smith's Reports.
 E. D. S., ... E. D. Smith's Reports.
 Sn., Sneed's Reports.
 Sou., Southard's Reports.
 St., Stanton's Reports.
 Sum., Sumner's Reports.
 Swan, Swan's Reports.
 Tex., Texas Reports.
 Verm., Vermont Reports.
 Walk., Walker's Reports.
 Wal., R. J., R. J. Walker's Reports.
 Wall., Wallace's Reports.
 Wash., ... Washington's Reports.
 Wa., Watts' Reports.
 W. & S., ... Watts & Sergeant's Reports.
 W., Wendell's Reports.
 Wha., Wharton's Reports.
 Wha. St. Tr., Wharton's State Trials.
 Wh., Wheaton's Reports.
 Wis., Wisconsin Reports.
 Yer., Yerger's Reports.
 Za., Zabriskie's Reports.

A N A L Y S I S

OF THE

REVISED AND GENERAL STATUTES

AS

CONTAINED IN THIS COMPILATION.

They are divided into FOUR PARTS :

The *First Part* relates to Territory, Civil Polity and Internal Administration.

The *Second Part* relates to the Rights of Property and of Persons.

The *Third Part* relates to the Administration of Civil Justice.

The *Fourth Part* relates to the Administration of Criminal Justice.

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10

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

[Went into operation on the first Wednesday of March, 1789. *Owings v. Speed*, 5 Wh., 430.]

WE, the people of the United States, in order to form a Preamble
more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America:

2 Dal., 471; 1 Wh., 324; 3 Wh., 181; 4 Wh., 404; 6 Wh., 414; 12 Wh., 455; 5 Pet., 128; 6 Pet., 569; 12 How., 107; 1 Brock., 177; 2 Brock., 109; 6 Call., 277; 7 J. Ch., 297; 16 J. R., 233; 17 J. R., 195; 19 J. R., 153; 4 N. Y., 276; 20 W., 365; 3 Cow., 713.

ARTICLE I.

SECTION 1.

1. All legislative powers, herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Legislative power.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. House of representatives; its members; by whom chosen.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. Qualification of members.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, Apportionment of representatives and direct taxes.

Census. including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

3 Dal., 171; 5 Wh., 317.

Vacancies. 4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

10 Law R., 1.

Officers. 5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3.

Senate. 1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Classification of senators. 2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Vacancies. 3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Qualifications. 4. The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

President of the senate. 5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

Officers and president pro tem. 6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath

Trial of impeachments.

or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Judgment on impeachment.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Election of senators and representatives.

2. The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

Annual meeting of congress.

SECTION 5.

2. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Powers of each house.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Power to make rules and expel members.

1 Dal., 296; 6 Wh., 204; 1 Am. L. J., 139; 1 Am. L. J., 459.

3. Each house shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Journals.

Yeas and nays.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournments.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

Compensation to members of congress.

Privileges.

3 Dal., 478; 4 Dal., 107.

Exclusion
from cer-
tain offices.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7.

Revenue
bills.

1. All bills, for raising revenue, shall originate in the house of representatives; but the senate may propose, or concur with, amendments as on other bills.

Manner of
passing
bills.

Approval
by presi-
dent.

Reconsider-
ation.

His omis-
sion to re-
turn it.

Concurrent
orders,
resolutions,
&c.

2. Every bill, which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections, at large, on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

6 Op., 680.

SECTION 8.

General
powers of
congress.
Taxation.

The congress shall have power :

1. To lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

5 Wh., 317; 9 Wh., 199.

Loans.

2. To borrow money on the credit of the United States.

2 Pet., 449.

Commerce.

3. To regulate commerce with foreign nations and among the several states, and with the Indian tribes.

9 Wh., 1; 12 Wh., 419; 2 Pet., 250; 11 Pet., 102; 12 Pet., 72; 5 How., 504; 7 How., 288; 8 How., 73, 490; 12 How., 299; 14 How., 568; 18 How., 71, 431; 4 Wash., 378; 1 McL., 254; 5 McL., 426; 6 McL., 70, 208, 237, 518; 1 Op., 659; 2 Op., 426; 9 J. R., 507; Hop., 149; 3 Cow., 713; 6 Cow., 169; 7 Cow., 349; 1 H., 469; 4 D., 469; 1 W., 493; 15 W., 113; 19 W., 547; 26 B., 270.

4. To establish an uniform rule of naturalization; and uniform laws on the subject of bankruptcies throughout the United States.

Naturalization.
Bankruptcies.

2 Dal., 372; 3 Wash., 314; 2 Wh., 259; 4 Wh., 122, 209; 6 Wh., 131; 12 Wh., 213, 370; 6 Pet., 348, 635; 9 Pet., 329; 14 Pet., 67; 6 How., 295, 585; 7 How., 556; 6 Cow., 497; 3 B., 429; 4 N. Y., 282.

5. To coin money, regulate the value thereof, and of foreign coin; and fix the standard of weights and measures.

Coin.
Weights and measures.
Counterfeiting.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

2 Law R., 90; 5 How., 410; 9 How., 560.

7. To establish post-offices and post-roads.

Post-offices and roads.

18 How., 421; 3 McL., 396.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

Patent and copy rights.

6 Pet., 218; 8 Pet., 591; 1 How., 202; 6 How., 496; 15 How., 212; 3 Sum., 535; 1 Blatch., 258; 5 McL., 158; 3 B. Ch., 320; 8 W., 562; 3 N. Y., 9.

9. To constitute tribunals inferior to the supreme court.

Courts.

1 Pet., 546.

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

Piracies, &c.

5 Wh., 153.

11. To declare war; grant letters of marque and reprisal, and make rules concerning captures on land and water.

War.

8 Gr., 110.

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

Army.

13. To provide and maintain a navy.

Navy.

14. To make rules for the government and regulation of the land and naval forces.

Articles of war.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

Militia.

12 Wh., 19.

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia; according to the discipline prescribed by congress.

Organising militia.

5 Wh., 1; 19 J. R., 7.

17. To exercise exclusive legislation in all cases whatsoever

Exclusive legislation.

over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings; and

5 Wh., 317; 6 Wh., 264; 6 Op., 577; 7 Op., 628; 17 J. R., 225.

Laws for carrying out vested powers.

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers; and all other powers vested by this constitution in the government of the United States or in any department or officer thereof.

4 Wh., 316.

SECTION 9.

Slave trade.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

5 Wh., 338; 9 Wh., 381, 391; 10 Wh., 67; 12 Wh., 460; 1 Wash., 95, 499, 522; 2 Sum., 240; 3 Pet., 65; 11 Pet., 73; 14 Pet., 464; 15 Pet., 518.

Habeas corpus.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Attainder and *ex post facto* law.

3. No bill of attainder or *ex post facto* law shall be passed.

3 Dal., 390; 6 Cr., 138; 8 Pet., 110; 17 How., 463; 2 Gall., 138; 2 Wash., 366; Pet. C. C., 323.

Direct taxes.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

3 Dal., 171; 5 Wh., 320.

State ex-ports.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter clear, or pay duties in another.

12 How., 314; 18 How., 421.

Receipts and expenditures.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles and presents prohibited.

7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

Powers forbidden to the states

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit

bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

individually.

(Impairing the obligation of contracts.)

- U. S. COURTS.—6 Cr., 87, 136; 7 Cr., 174; 9 Cr., 43; 4 Wh., 122, 518; 5 Wh., 420; 6 Wh., 131; 8 Wh., 1; 12 Wh., 213, 370; 2 Pet., 412; 3 Pet., 289; 4 Pet., 410, 514; 5 Pet., 457; 6 Pet., 348; 8 Pet., 40, 110; 9 Pet., 329; 11 Pet., 257; 1 How., 315; 2 How., 608; 3 How., 133, 534; 6 How., 301, 507; 7 How., 279; 8 How., 163; 10 How., 190, 376, 395, 402, 511; 11 How., 185; 13 How., 12; 14 How., 80; 15 How., 304; 16 How., 106, 369, 416; 17 How., 284, 456; 18 How., 331, 380, 384; 20 How., 22, 527; 2 Pa., 74; 1 Sum., 276; Pet. C. C., 322; 2 Gall., 141; 1 McL., 528; 3 McL., 397; 6 McL., 386.
- NEW YORK.—3 J. Ca., 75; 7 J. C. R., 297; 7 J. R., 477; 16 J. R., 233; 17 J. R., 108, 195; 19 J. R., 153; 5 Cow., 538; 7 Cow., 349, 585; 8 Cow., 146, 543; 9 Cow., 344; 4 W., 9; 15 W., 436; 20 W., 365; 22 W., 543; 26 W., 192; 1 H., 324; 2 H., 491; 6 H., 33; 1 D., 128; 3 D., 274, 594; 1 Pai., 102; 3 Pai., 45; 11 Pai., 93, 484; 3 B., 621; 4 B., 9, 295; 5 B., 474; 6 B., 327; 8 B., 358, 502; 9 B., 302, 482; 10 B., 223; 13 B., 63; 14 B., 405, 559; 15 B., 318, 627; 16 B., 188; 17 B., 119, 660; 18 B., 159; 23 B., 33; 24 B., 87, 129; 25 B., 457; 27 B., 445; 1 N. Y., 129; 2 N. Y., 245; 4 N. Y., 276; 5 N. Y., 285; 7 N. Y., 500; 11 N. Y., 281, 308; 12 N. Y., 202; 13 N. Y., 299; 14 N. Y., 22; 18 N. Y., 199; 19 N. Y., 68, 116.
- MAINE.—2 Shep., 344; 6 Shep., 109; 25 Mai., 18; 26 Mai., 191; 34 Mai., 411; 36 Mai., 9; 40 Mai., 386; 44 Mai., 140.
- NEW HAMPSHIRE.—4 Fost., 139; 11 N. H., 19; 35 N. H., 457.
- VERMONT.—11 Verm., 632; 13 Verm., 402, 525; 19 Verm., 86; 25 Verm., 303.
- MASSACHUSETTS.—1 Mass., 198; 3 Mass., 88; 5 Mass., 509; 8 Mass., 430; 10 Mass., 337; 13 Mass., 16; 6 Pick., 451; 8 Pick., 194; 12 Pick., 572; 15 Pick., 417; 19 Pick., 48; 2 Gray, 1, 339; 4 Gray, 474.
- CONNECTICUT.—3 Conn., 253, 304, 472, 523; 5 Conn., 1; 6 Conn., 480; 9 Conn., 314; 13 Conn., 87; 21 Conn., 351.
- NEW JERSEY.—1 Sou., 192; 2 Sou., 466; 4 Za., 385.
- PENNSYLVANIA.—6 S. & R., 322; 1 Raw., 181; 2 Wha., 395; 2 W. & S., 156; 5 W. & S., 171, 418; 2 Penn., 22, 184; 4 Penn., 49; 5 Penn., 145; 6 Penn., 86, 196, 379; 9 Penn., 401; 11 Penn., 489; 13 Penn., 133, 400; 15 Penn., 44; 24 Penn., 229; 28 Penn., 199; 33 Penn., 94.
- DELAWARE.—4 Harr., 389, 440; 5 Harr., 454.
- MARYLAND.—4 G. & J., 1, 509; 7 G. & J., 7; 9 G. & J., 365; 10 G. & J., 392; 3 Gil., 445; 9 Gil., 299; 1 Md., 351.
- VIRGINIA.—4 Gilm., 221; 9 Grat., 738.
- OHIO.—1 Ham., 236; 1 Oh., 591, 622; 2 Oh., 152; 5 Oh., 444; 7 Oh., 431; 16 Oh., 12, 599.
- ILLINOIS.—1 Bre., 16; 12 Il., 1; 14 Il., 142; 17 Il., 344; 20 Il., 209.
- KENTUCKY.—1 Lit., 326; 4 Lit., 34, 53; 1 Mon., 24; 5 Mon., 98, 102, 129; 7 Mon., 11, 544, 588; 7 B. Mon., 162; 12 B. Mon., 144; 13 B. Mon., 1, 150; 14 B. Mon., 426; 15 B. Mon., 642.
- TENNESSEE.—Peck, 1; 2 Yer., 534; 9 Yer., 490; 4 Hum., 13; 7 Hum., 84, 130; 8 Hum., 1; 1 Sn., 83, 115, 548, 637; 3 Sn., 609.
- INDIANA.—1 Blackf., 220; 6 Blackf., 373; 7 Ind., 59, 157, 470; 9 Ind., 37, 359; 11 Ind., 48, 543.
- MICHIGAN.—1 Doug., 225; 2 Doug., 38, 197; 1 Man., 68.
- WISCONSIN.—1 Wis., 26; 4 Wis., 414.
- IOWA.—1 Mor., 27, 59, 70; 1 Io., 553; 2 Io., 94; 3 Io., 489.
- NORTH CAROLINA.—1 Ire., 414; 10 Ire., 496; 13 Ire., 75.
- SOUTH CAROLINA.—2 Rich., 43; 3 R., 389; 10 R., 604.
- GEORGIA.—Cha., 175, 324; 2 Geo., 143; 4 Geo., 208; 7 Geo., 163; 9 Geo., 213; 10 Geo., 190; 12 Geo., 437; 13 Geo., 1, 506; 15 Geo., 496; 16 Geo., 102; 18 Geo., 170; 22 Geo., 506; 23 Geo., 51; 24 Geo., 356.
- ALABAMA.—2 St., 30; 7 Port., 293; 1 AL., 312; 2 AL., 401; 9 AL., 713; 11 AL., 472; 12 AL., 369; 15 AL., 521; 23 AL., 168; 29 AL., 573; 30 AL., 120; 31 AL., 552; 32 AL., 332, 713.

MISSISSIPPI.—4 How. M., 647; 3 S. & M., 661; 4 S. & M., 439; 6 S. & M., 599; 8 S. & M., 9; 9 S. & M., 310; 10 S. & M., 351; 12 S. & M., 347; 13 S. & M., 645.
MISSOURI.—9 Mi., 389, 507; 13 Mi., 112; 23 Mi., 107; 24 Mi., 85, 377, 386; 25 Mi., 535; 26 Mi., 47, 441; 27 Mi., 517; 31 Mi., 679.
LOUISIANA.—12 La., 364, 432, 515; 13 La., 502.
FLORIDA.—4 Fl., 23; 5 Fl., 345.
TEXAS.—1 Tex., 250, 598; 5 Tex., 349; 6 Tex., 347; 7 Tex., 348; 11 Tex., 698; 14 Tex., 52, 235.
CALIFORNIA.—1 Cal., 55; 2 Cal., 361, 524; 4 Cal., 127; 5 Cal., 188; 7 Cal., 1, 479, 579; 8 Cal., 52; 9 Cal., 81.
ARKANSAS.—2 Eng., 150; 3 Eng., 236; 4 Eng., 205; 17 Ark., 518; 19 Ark., 360.

(*Ex post facto* laws.)

3 Dal., 386; 12 Wh., 377; 2 Pet., 380, 414, 492, 627, 681; 8 Pet., 88, 110; 11 Pet., 420; 3 How., 707; 1 Bald., 74; 2 Gall., 105, 139; 1 McL., 35; 2 McL., 195; 2 Pa., 74, 501. 7 J. R., 477; 18 J. R., 138; 3 Cow., 347; 8 Cow., 543; 9 Cow., 664; 7 B., 249; 15 N. Y., 451; 22 N. Y., 95; 2 Greenl., 28, 66, 275; 2 Fairf., 284; 6 Shep., 109; 10 Shep., 318, 553; 42 Mai., 429. 2 N. H., 102; 3 N. H., 473, 524; 4 N. H., 16, 572; 10 N. H., 380. 2 Verm., 174, 517; 3 Verm., 360; 4 Verm., 269; 13 Verm., 582; 1 Chip., 237; 1 Aik., 121. 4 Conn., 210; 6 Conn., 54, 190; 7 Conn., 350, 550, 558; 2 Root, 350; 4 Mass., 390; 8 Mass., 472; 9 Mass., 363; 11 Mass., 396; 16 Mass., 16, 36, 59, 76, 215; 2 Pick., 165, 172; 5 Pick., 65; 6 Pick., 501; 11 Pick., 26; 1 Gray, 152. 5 Rh. Is., 185, 497. 5 Binn., 355; 6 Binn., 271; 7 S. & R., 260; 10 S. & R., 97; 11 S. & R., 191; 12 S. & R., 330; 14 S. & R., 435; 15 S. & R., 72; 16 S. & R., 35, 169; 3 Wa., 294; 6 Wa., 449; 4 W. & S., 218, 401; 8 W. & S., 49; 23 Penn., 507; 31 Penn., 285. 1 Yer., 360; 2 Yer., 125, 260, 554, 599; 4 Yer., 202; 5 Yer., 320; 6 Yer., 119; 2 Swan, 35. Harp., 88. 5 Mon., 122, 133; 1 J. J. M., 563; 4 Bibb, 62; 16 B. Mon., 15. 1 Blackf., 196, 220; 2 Blackf., 8; 7 Blackf., 474; 7 Ind., 316. 2 Ham., 65; 3 Ham., 553; 5 Oh., 225; 12 Oh., 364; 15 Oh., 408. 5 Hayw., 263; 3 Ran., 188; 3 Grat., 632; 1 Const. R., 90; 3 Hill S. C., 96; 1 McM., 410; Walk., 258; 5 How., 285; 9 G. & J., 181; 12 Md., 195; 17 Geo., 568; 4 Tex., 470; 14 Tex., 402; 2 Dutch., 13; 3 Dutch., 185; 1 Jon., 9; 30 Al., 120; 4 Cal., 127; 13 La., 268; 17 Ark., 407.

State powers, with consent of congress.

2. No state shall, without the consent of the congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

14 Pet., 572; 1 McL., 185; 3 Op., 661.

ARTICLE II.

SECTION 1.

President.

Vice-president.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

6 Op., 603.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States shall be appointed an elector.

Mode of election.

3. [The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.]

Annulled.
See 12th amendment

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

Time of election.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications of the president.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly until the disability be removed, or a president shall be elected.

Vacancies, how supplied.

7. The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished

His compensation.

during the period for which he shall have been elected, and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

Oath of
office.

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION 2.

Powers of
president.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

7 Pet., 150; 18 How., 307; 4 Wash., 64; 1 Op., 341, 482; 2 Op., 329; 3 Op., 317, 418, 622; 4 Op., 144, 458, 573; 5 Op., 368, 532, 579, 729; 6 Op., 20, 393, 616; 7 Op., 561.

Treaties.

Appoint-
ments.

2. He shall have power by and with the advice and consent of the senate to make treaties, provided two-thirds of the senators present concur; and he shall nominate and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law or in the heads of departments.

1 Cr., 155; 13 Pet., 230; 3 Op., 188, 673; 4 Op., 1, 218, 603; 5 Op., 288; 7 Op., 186.

Vacancies.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate by granting commissions, which shall expire at the end of their next session.

1 Op., 631; 2 Op., 336, 525; 3 Op., 673; 4 Op., 30, 361, 523.

SECTION 3.

His duties.

He shall, from time to time, give to the congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

4 Op., 248; 5 Op., 287; 6 Op., 220, 500.

SECTION 4.

The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Impeachments.

Whart. S. T., 260, 316; Blount's Tr., 22; Peck's Tr., 56; 3 Op., 409.

ARTICLE III.

SECTION 1.

The judicial power of the United States shall be vested in one Supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish.

Judiciary.

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Tenure and compensation.

9 Wh., 738; 1 Pet., 511; 8 How., 448.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

Judicial power.

2 Dal., 297; 4 Dal., 10, 321; 2 Cr., 408, 445; 4 Cr., 306, 443; 5 Cr., 303; 7 Cr., 506; 9 Cr., 292; 1 Wh., 9, 91; 2 Wh., 377; 3 Wh., 212, 336; 4 Wh., 1, 108, 438; 6 Wh., 264; 8 Wh., 464; 9 Wh., 409, 738; 11 Wh., 467; 2 Pet., 136; 3 Pet., 433; 5 Pet., 1; 6 Pet., 761; 7 Pet., 324; 12 Pet., 616, 657; 15 Pet., 392; 2 How., 497; 3 How., 245; 5 How., 343, 441; 6 How., 163, 344; 8 How., 441; 12 How., 443; 13 How., 518; 16 How., 314; 19 How., 393; 3 Wash., 546; 4 Wash., 101, 371, 453, 531; 1 Pet. Ad., 227; 2 Sum., 401; 2 Curt., 322, 465; 1 Pa., 620; 2 Pa., 103; 2 Gall., 398; Gilp., 473; 2 McL., 570; 4 McL., 18, 122; 6 McL., 590; 4 J. Ca., 430; 17 J. R., 4; 2 H., 159.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases, before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Jurisdiction of supreme court.

2 Dal., 297; 4 Dal., 321; 1 Cr., 137; 1 Wh., 304; 6 Wh., 264; 9 Wh., 738; 11 Wh., 467; 6 Pet., 41; 5 How., 176; 14 How., 103; 4 Wash., 199, 344, 531; 6 W., 327; 10 W., 50; 1 B., 449; 5 B., 115; 7 N. Y., 576.

3. The trial of all crimes, except in cases of impeachment,

Trial of crimes.

shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state the trial shall be at such place or places as the congress may by law have directed.

1 Curt., 23, 49; Bald., 510; 2 Sum., 240.

SECTION 3.

Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

4 Cr., 75; Burr's Tr.; Wha. St. T., 480; 1 Dal., 33, 35, 39; 2 Dal., 86, 88, 335, 346, 348; 4 Cr., 75; Pa., 265; 3 Wash., 234; 11 J. R., 549.

Punishment.

2. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION 1.

State records.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.

3 Wh., 234; 6 Wh., 129; 9 How., 528; 7 Cr., 484; Crabbe, 185; 10 S. & R., 242; 3 Wash., 17; 2 Pa., 502; 7 W. & S., 447; 3 J. C. R., 595; 12 N. Y., 156; 18 N. Y., 86.

SECTION 2.

Privilege of citizens.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

19 How., 393; 18 How., 591; 2 Pa., 502; 4 Wash., 380; 4 Am. L. R., 19; 5 Law R., 486; 2 Munf., 393; 20 B., 68; 4 J. C. R., 115; 1 Pal., 183; 19 W., 11.

Fugitives from justice

2. A person charged, in any state, with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3 Za., 311; 13 Geo., 97; 9 W., 221; 6 Penn. L. J., 428; 1 Am. L. J., 231; 10 S. & R., 125; 6 Har., 39; 3 McL., 133; 14 Pet., 540; 7 Verm., 121; 5 Binn., 617; 2 Miss., 26; 2 Brock., 493; 5 Met., 536; 12 Verm., 631; 5 How., 176; 3 McL., 121; 1 B., 248; 5 Cal., 237; 7 Ind., 611; 4 Za., 634; 9 Tex., 635; 1 Pa., 429; 14 How., 103; 2 Cart., 396; 4 Har., 572, 577.

Fugitives from labor.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party, to whom such service or labor may be due.

5 How., 215; 10 How., 82; 14 How., 13; 19 How., 396; 16 Pet., 539; 1 Wash., 499; 4 Wash., 327; 3 McL., 530, 631; 4 McL., 402; 5 McL., 64, 92, 469; 6 McL., 259, 273; 2 Pa., 348; 12 W., 311; 16 B., 268; 26 B., 270; 1 Pai., 67, 169; 1 Am. L. R., 654; 3 Op., 370; 6 Op., 302; 3 S. & R., 4; 10 B. Mon., 438; 16 B. Mon., 193; 11 Il., 332; 1 Curt., 23; 2 Curt., 153; 23 AL., 155; 10 Barr., 514; 1 Mor., 1; 1 Sn., 91; 3 Wis., 1, 157; 7 Cush., 285; 1 Cart., 368; 9 Hum., 689, 739; 1 Smith, 258.

SECTION 3.

1. New states may be admitted by the congress into this Union: but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned as well as of the congress. New states.

2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state. Territories.

1 Pet., 542; 14 Pet., 526; 16 How., 194; 19 How., 395; 1 McL., 454; 1 Pa., 646; 4 Op., 487.

SECTION 4.

The United States shall guarantee to every state in this Union, a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence. Republican form of government.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate. Amendments.

ARTICLE VI.

1. All debts contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States, under this constitution, as under the confederation. Debts of the confederacy.

2. This constitution and the laws of the United States, which Supreme law.

shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

5 Cr., 348; 2 Pet., 253; 16 How., 635; 4 Am. L. R., 604; 6 Op., 291; 1 Blatch., 635; 2 Curt., 454; 1 Wash., 322; 1 B., 248.

Oath of office.

No religious test.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Ratification.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

Wm. Saml. Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

Wil. Livingston,
David Brearly,
Wm. Patterson,
Jona. Dayton.

PENNSYLVANIA.

B. Franklin,
Thomas Mifflin,
Robt. Morris,
Geo. Clymer,
Tho. Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouv. Morris.

DELAWARE.

Geo. Read.
Gunning Bedford, Jr.,
John Dickinson,
Richard Bassett,
Jacq. Broom.

MARYLAND.

James McHenry,
Dan. of St. Thos. Jenifer,
Danl. Carroll.

VIRGINIA.

John Blair,
James Madison, Jun.

NORTH CAROLINA.

Wm. Blount,
Rich'd Dobbs Spaight,
Hu. Williamson.

SOUTH CAROLINA.

J. Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abr. Baldwin.

Attest : WILLIAM JACKSON, *Secretary.*

The constitution was ratified by the conventions of the several states, as follows :

- By Delaware on the 7th December, 1787.
- “ Pennsylvania on the 12th December, 1787.
- “ New Jersey on the 18th December, 1787.
- “ Georgia on the 2d January, 1788.
- “ Connecticut on the 9th January, 1788.
- “ Massachusetts on the 6th February, 1788.
- “ Maryland on the 28th April, 1788.
- “ South Carolina on the 23d May, 1788.
- “ New Hampshire on the 21st June, 1788.
- “ Virginia on the 26th June, 1788.
- “ New York on the 26th July, 1788.
- “ North Carolina on the 21st November, 1789.
- “ Rhode Island on the 29th May, 1790.

IN CONGRESS,
Saturday, September 13, 1788 ;

The foregoing constitution was declared to have been ratified, and the first election under it was appointed for the first Wednesday of January, 1789.

ARTICLES

IN ADDITION TO AND AMENDMENT OF

THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

PROPOSED BY THE CONGRESS, HELD IN THE CITY OF NEW YORK ON THE 4TH MARCH, 1789, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Freedom of religion, of speech, of the press, and right of petition.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Right to bear arms.

ARTICLE III.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Quartering of troops.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon

Searches and seizures.

Warrants.

probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

3 Cr., 448; 6 Binn., 316, 18 How., 71, 272; 1 Op., 229; 2 Op., 266; 4 Wh., 100.

ARTICLE V.

Trials for crimes.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

9 Wh., 579; 4 Wash., 402; 2 Sum., 19; 1 Wal. R. J., 127; Bald., 220; 12 S. & R., 221; 3 Cow., 686; 2 Cow., 815; 8 W., 85; 7 Pet., 243, 551; 5 How., 434; 18 How., 276.

ARTICLE VI.

Rights in criminal cases.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

9 Wh., 579; Wall., 106; 1 Burr Tr., 179; 10 W., 449.

ARTICLE VII.

Trials in civil cases.

In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

1 Pet., 469, 476; 3 Pet., 433, 6 Pet., 598; 3 Dal., 297; 11 How., 437; Bald., 544; 5 McL., 569; 2 Pa., 348, 578; 12 Harr., 289; 1 Gall., 20; 24 W., 137.

ARTICLE VIII.

Bail, fines, &c.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

20 J. R., 459; 12 S. & R., 220; 3 Cow., 686.

ARTICLE IX.

Reserved rights.

The enumeration, in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

1 W. & M., 401; 3 S. & R., 169.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

Powers reserved.

1 McL., 234.

[The foregoing ten amendments were ratified as follows:]

- By New Jersey, 20 November, 1789.
- " Maryland, 19 December, 1789.
- " North Carolina, 22 December, 1789.
- " South Carolina, 19 January, 1790.
- " New Hampshire, 25 January, 1790.
- " Delaware, 28 January, 1790.
- " Pennsylvania, 10 March, 1790.
- " New York, 27 March, 1790.
- " Rhode Island, 15 June, 1790.
- " Vermont, 3 November, 1791.
- " Virginia, 15 December, 1791.

ARTICLE XI.

[The following was proposed by the congress held in Philadelphia on 2 December, 1793, and was declared by a message from the president, dated 8 January, 1798, to have been adopted by the constitutional number of states.]

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Limitation of judicial power.

3 Pet., 431; 7 Pet., 627; 11 Pet., 324; 5 Cr., 115; 6 Wh., 264; 9 Wh., 904; 2 How., 497, 550; 13 How., 12; 15 How., 309; 1 B. C. R., 157.

ARTICLE XII.

[The following was proposed at the first session of the 8th congress held in Washington, 17 October, 1803, and was declared, by a notice of the secretary of state, dated 25 September, 1804, to have been adopted by the constitutional number of states.]

The electors shall meet in their respective states, and vote, by ballot, for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have

Election of president and vice-president.

such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose, immediately by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

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CONSTITUTION

OF THE

STATE OF NEW YORK.

Adopted November 3, 1846.

WE, the people of the state of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this constitution.

16 J. R., 233; 17 J. R., 108, 195, 225; 19 J. R., 153; 20 J. R., 313; 7 J. C. R., 297; 1 Cow., 450; 3 Cow., 713; 4 W., 9; 10 W., 547; 18 W., 9; 20 W., 365; 21 W., 563; 24 W., 215, 337; 26 W., 43; 3 Pal., 45; 5 Pal., 137; 6 Pal., 554; 11 Pal., 484; 1 B. C. R., 547; 5 H., 317, 468; 6 H., 47; 3 D., 381; 3 B., 196; 4 B., 56; 9 B., 350; 14 B., 405, 559; 18 B., 583; 24 B., 232, 248, 446; 27 B., 575; 1 N. Y., 536; 3 N. Y., 511; 4 N. Y., 276; 6 N. Y., 176; 7 N. Y., 9, 109; 9 N. Y., 100; 12 N. Y., 541; 13 N. Y., 378; 16 N. Y., 501; 17 N. Y., 235; 18 N. Y., 38; 22 N. Y., 128.

ARTICLE I.

SECTION 1.

No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.

No person
to be dis-
franchised.

1 Cow., 550; 6 H., 47; 3 D., 382; 4 D., 374; 15 W., 436; 20 W., 365; 8 Cow., 543; 3 B., 196; 4 B., 64; 13 N. Y., 383; 14 N. Y., 423; 19 N. Y., 445.

SECTION 2.

The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever. But a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

Trial by
jury.

2 Cow., 815; 1 H., 355; 6 H., 75; 5 W., 251, 468; 8 W., 85; 10 W., 449; 3 Pal., 45; 24 W., 337; 10 B., 35; 14 B., 425; 18 B., 412; 20 B., 625; 13 N. Y., 378; 16 N. Y., 501; 18 N. Y., 199.

SECTION 3.

The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever

Religious
liberty.

be allowed, in this state, to all mankind: and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of this state.

18 J. R., 98; 2 Cow., 432.

SECTION 4.

Habeas corpus.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

SECTION 5.

Bail, fines, &c.

Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

13 N. Y., 378.

SECTION 6.

Bill of rights.

No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia, when in actual service; and the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace; and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offence; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2 J. C. R., 162; 20 J. R., 103; 3 Pai., 45; 5 Pai., 137; 7 Pai., 598; 4 W., 9; 10 W., 449; 11 W., 148; 14 W., 54; 15 W., 374, 451; 17 W., 649; 18 W., 9; 19 W., 654; 20 W., 365; 24 W., 65; 25 W., 462; 4 Cow., 195; 5 Cow., 346; 7 Cow., 585; 2 D., 272; 1 H., 324; 3 H., 567; 4 H., 140; 6 H., 47; 3 B., 275, 459; 4 B., 64, 295; 5 B., 474; 7 B., 297, 416, 508; 8 B., 358; 9 B., 449, 350; 14 B., 405; 15 B., 255, 627; 18 B., 619, 159; 19 B., 118, 166, 179; 21 B., 513; 24 B., 232, 658; 25 B., 9; 3 N. Y., 511; 4 N. Y., 195, 419; 5 N. Y., 285; 6 N. Y., 358, 522; 7 N. Y., 314; 8 N. Y., 241; 9 N. Y., 100; 11 N. Y., 308; 12 N. Y., 209, 486; 13 N. Y., 378, 143; 18 N. Y., 38, 199; 19 N. Y., 116.

SECTION 7.

Private property and roads.

When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first

determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

20 J. R., 375; 8 W., 85; 4 H., 140; 5 H., 168; 7 H., 9; 3 B., 332; 8 B., 486; 12 B., 446; 15 B., 517; 18 B., 451; 4 N. Y., 419; 7 N. Y., 486; 9 N. Y., 100; 11 N. Y., 313; 12 N. Y., 190.

SECTION 8.

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Freedom of speech and the press.

26 W., 383; 2 H., 248.

SECTION 9.

The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

Two-thirds bills.

4 H., 384; 2 D., 380; 14 B., 563; 18 B., 620; 8 N. Y., 324.

SECTION 10.

No law shall be passed abridging the right of the people peaceably to assemble, and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery hereafter be authorized, or any sale of lottery tickets allowed within this state.

Right to petition.

Divorces.

Lotteries.

7 N. Y., 228.

SECTION 11.

The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert or escheat to the people.

Eminent domain.

8 W., 183; 17 W., 312; 6 N. Y., 522.

SECTION 12.

All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain, which at any time heretofore have been lawfully created or reserved.

Feudal tenures.

SECTION 13.

All lands within this state are declared to be allodial, so that subject only to the liability to escheat, the entire and absolute property is vested in the owners according to the nature of their respective estates.

All lands allodial.

SECTION 14.

Certain
leases limited.

No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

22 B., 606; 6 N. Y., 457.

SECTION 15.

Fines and
quarter
sales abolished.

All fines, quarter sales, or other like restraints upon alienation, reserved in any grant of land, hereafter to be made, shall be void.

SECTION 16.

Certain
purchases
from Indians void.

No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority and with the consent of the legislature.

20 J. R., 693; 7 N. Y., 401, 428.

SECTION 17.

Parts of the
common
law, acts
and statutes
declared to be
law.

Code.

Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed, or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated; and the legislature, at its first session after the adoption of this constitution, shall appoint three commissioners, whose duty it shall be to reduce into a written and systematic code the whole body of the law of this state, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient. And the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the legislature, when called upon to do so; and the legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said commissioners; and shall also provide for the publication of the said code, prior to its being presented to the legislature for adoption.

7 Pal., 77; 8 N. Y., 525, 559.

SECTION 18.

Grants of
land by the
king of
Great

All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and

seventy-five, shall be null and void; but nothing contained in this constitution shall affect any grants of land within this state, made by the authority of the said king, or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority, or shall impair the obligation of any debts contracted by this state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Britain,
void.
Certain
rights not
affected.

10 B., 120; 9 N. Y., 349.

ARTICLE II.

SECTION 1.

Every male citizen of the age of twenty-one years, who shall have been a citizen for ten days, and an inhabitant of this state one year next preceding any election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elected by the people; but such citizens shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid.

Qualifica-
tion of
electors.

Freehold
for persons
of color.

SECTION 2.

Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, larceny, or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, from the right to vote at such election.

Who may
be excluded
from suf-
frage.

SECTION 3.

For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house, or

Residence
of voters.

other asylum, at public expense; nor while confined in any public prison.

SECTION 4.

Proofs of
right to
vote.

Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

SECTION 5.

Ballot.

All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

ARTICLE III.

SECTION 1.

Legislature.

The legislative power of this state shall be vested in a senate and assembly.

18 W., 9; 21 W., 563; 1 H., 324; 5 H., 121; 15 B., 112, 122; 23 B., 355, 33; 8 N. Y., 488; 10 N. Y., 374; 12 N. Y., 641; 19 N. Y., 445.

SECTION 2.

Senate,
number of.

The senate shall consist of thirty-two members, and the senators shall be chosen for two years.

Assembly,
number of.

The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

SECTION 3.

Senatorial
districts.

The state shall be divided into thirty-two districts, to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to thirty-two, inclusive.

No. 1.

District number one (1) shall consist of the counties of Suffolk, Richmond, and Queens.

No. 2.

District number two (2) shall consist of the county of Kings.

No. 3, 4, 5,
6.

District number three (3), number four (4), number five (5), and number six (6), shall consist of the city and county of New York; and the board of supervisors of said city and county shall, on or before the first day of May, one thousand eight hundred and forty-seven, divide the said city and county into the number of senate districts to which it is entitled, as near as may be of an equal number of inhabitants, excluding aliens and persons of color not taxed, and consisting of convenient and contiguous territory; and no assembly district shall be divided in the formation of a senate district. The board of supervisors, when they shall have completed such division, shall cause certificates thereof, stating the number and boundaries of each district and the population thereof, to be filed in the office of the secretary of state, and of the clerk of the said city and county.

No. 7.

District number seven (7) shall consist of the counties of Westchester, Putnam and Rockland.

No. 8.

District number eight (8) shall consist of the counties of Dutchess and Columbia.

District number nine (9) shall consist of the counties of No. 9.
Orange and Sullivan.

District number ten (10) shall consist of the counties of No. 10.
Ulster and Greene.

District number eleven (11) shall consist of the counties of No. 11.
Albany and Schenectady.

District number twelve (12) shall consist of the county of No. 12.
Rensselaer.

District number thirteen (13) shall consist of the counties No. 13.
of Washington and Saratoga.

District number fourteen (14) shall consist of the counties No. 14.
of Warren, Essex and Clinton.

District number fifteen (15) shall consist of the counties of No. 15.
St. Lawrence and Franklin.

District number sixteen (16) shall consist of the counties No. 16.
of Herkimer, Hamilton, Fulton and Montgomery.

District number seventeen (17) shall consist of the counties No. 17.
of Schoharie and Delaware.

District number eighteen (18) shall consist of the counties No. 18.
of Otsego and Chenango.

District number nineteen (19) shall consist of the county No. 19.
of Oneida.

District number twenty (20) shall consist of the counties No. 20.
of Madison and Oswego.

District number twenty-one (21) shall consist of the coun- No. 21.
ties of Jefferson and Lewis.

District number twenty-two (22) shall consist of the county No. 22.
of Onondaga.

District number twenty-three (23) shall consist of the No. 23.
counties of Cortland, Broome and Tioga.

District number twenty-four (24) shall consist of the coun- No. 24.
ties of Cayuga and Wayne.

District number twenty-five (25) shall consist of the counties No. 25.
of Tompkins, Seneca and Yates.

District number twenty-six (26) shall consist of the counties No. 26.
of Steuben and Chemung.

District number twenty-seven (27) shall consist of the No. 27.
county of Monroe.

District number twenty-eight (28) shall consist of the No. 28.
counties of Orleans, Genesee and Niagara.

District number twenty-nine (29) shall consist of the coun- No. 29.
ties of Ontario and Livingston.

District number thirty (30) shall consist of the counties of No. 30.
Allegany and Wyoming.

District number thirty-one (31) shall consist of the county No. 31.
of Erie.

District number thirty-two (32) shall consist of the counties No. 32.
of Chautauqua and Cattaraugus.

SECTION 4.

An enumeration of the inhabitants of the state shall be Census,

when to be taken. taken, under the direction of the legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district, except such county shall be equitably entitled to two or more senators.

Senate districts altered.

To remain unaltered.

19 N. Y., 55; 20 N. Y., 447.

SECTION 5.

Members of assembly to be apportioned. The members of assembly shall be apportioned among the several counties of this state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single districts. The several boards of Supervisors to divide county into assembly districts. supervisors in such counties of this state, as are now entitled to more than one member of assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into assembly districts, equal to the number of members of assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the secretary of state and the clerks of their respective counties, a description of such assembly districts, specifying the number of each district and the population thereof, according to the last preceding state enumeration, as near as can be ascertained. Each assembly district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color not taxed, and shall consist of convenient and contiguous territory; but no town shall be divided in the formation of assembly districts.

Members to be reapportioned. The legislature, at its first session after the return of every enumeration, shall re-apportion the members of assembly among the several counties of this state, in manner aforesaid: and the boards of supervisors in such counties as may be entitled, under such re-apportionment, to more than one member, shall assemble at such time as the legislature making such re-apportionment shall prescribe, and divide such counties into assembly districts, in the manner herein directed; and the apportionment and districts so to be made shall remain unaltered until another enumeration shall be taken, under the provisions of the preceding section.

Each county entitled to one member except Hamilton. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall hereafter be erected, unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of

Hamilton to elect with Fulton

Hamilton shall, according to the ratio, be entitled to a member.

21 W., 563; 19 B., 81; 19 N. Y., 41; 20 N. Y., 447.

SECTION 6.

The members of the legislature shall receive for their services a sum not exceeding three dollars a day, from the commencement of the session, but such pay shall not exceed in the aggregate three hundred dollars for per diem allowance, except in proceedings for impeachment. The limitation as to the aggregate compensation shall not take effect until the year one thousand eight hundred and forty-eight. When convened in extra session by the governor, they shall receive three dollars per day. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting on the most usual route.

Pay of members.

Mileage

The speaker of the assembly shall, in virtue of his office, receive an additional compensation equal to one-third of his per diem allowance as a member.

Speaker's compensation.

SECTION 7.

No member of the legislature shall receive any civil appointment within this state, or to the senate of the United States, from the governor, the governor and senate, or from the legislature, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member, for any such office or appointment, shall be void.

No member to receive appointment.

SECTION 8.

No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature; and if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Who cannot be a member.

SECTION 9.

The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

Time of annual election.

SECTION 10.

A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns, and qualifications of its own members; shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

Powers of each house. Contested seats.

SECTION 11.

Journals to
be kept.

Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

SECTION 12.

Freedom in
debate.

For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

SECTION 13.

Bills may
originate in
either
house.

Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.

SECTION 14.

Enacting
clause of
bills.

The enacting clause of all bills shall be "The People of the state of New York represented in senate and assembly, do enact as follows," and no law shall be enacted except by bill.

SECTION 15.

Majority of
members
elected
required to
pass bills.

No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

27 B., 575, 584; 8 N. Y., 324.

SECTION 16.

Private or
local bills.

No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

3 B., 162; 15 B., 657; 19 B., 81; 22 B., 634; 5 N. Y., 285; 8 N. Y., 241; 16 N. Y., 58; 19 N. Y., 116.

SECTION 17.

Local legis-
lation.

The legislature may confer upon the boards of supervisors of the several counties of the state, such further powers of local legislation and administration, as they shall from time to time prescribe.

8 N. Y., 472; 13 N. Y., 143.

ARTICLE IV.

SECTION 1.

Executive
power.

The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant-governor shall be chosen at the same time and for the same term.

SECTION 2.

Qualifica-
tions of
governor.

No person, except a citizen of the United States, shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not have attained the age of

thirty years, and who shall not have been five years next preceding his election, a resident within this state.

SECTION 3.

The governor and lieutenant-governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature, at its next annual session, shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor, or lieutenant-governor.

Election of governor and lieutenant-governor.

SECTION 4.

The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation to be established by law, which shall neither be increased nor diminished after his election, or during his continuance in office.

Powers and duties of governor.

Compensation.

SECTION 5.

The governor shall have the power to grant reprieves, commutations, and pardons after conviction, for all offences, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to such regulation as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Pardoning power.

SECTION 6.

In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the state, the power and duties of the office shall devolve upon the lieu-

When powers of governor to devolve on lieutenant-governor.

tenant-governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

SECTION 7.

Qualifications, powers and duties of lieutenant-governor.

The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or he be absent from the state, the president of the senate shall act as governor, until the vacancy be filled, or the disability shall cease.

SECTION 8.

Compensation of lieutenant-governor.

The lieutenant-governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

SECTION 9.

Bills to be presented to governor. If returned with objections, how disposed of.

Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve he shall sign it; but if not, he shall return it with his objections to that house, in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of all the members present, it shall become a law, notwithstanding the objections of the governor. But in all such cases, the votes of both houses shall be determined by ayes and nays, and the names of the members voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

Effect if not returned within ten days.

ARTICLE V.

SECTION 1.

State officers, when chosen, tenure of office and compensation.

The secretary of state, comptroller, treasurer, and attorney-general, shall be chosen at a general election, and shall hold their offices for two years. Each of the officers in this article named (except the speaker of the assembly,) shall at stated times, during his continuance in office, receive for his services a compensation, which shall not be increased or diminished during the term for which he shall have been elected; nor shall

he receive, to his use, any fees or perquisites of office, or other compensation.

SECTION 2.

A state engineer and surveyor shall be chosen at a general election, and shall hold his office two years, but no person shall be elected to said office who is not a practical engineer.

State engineer.

SECTION 3.

Three canal commissioners shall be chosen at the general election which shall be held next after the adoption of this constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The commissioners of the canal fund shall meet at the capitol on the first Monday of January next after such election, and determine by lot which of said commissioners shall hold his office for one year, which for two, and which for three years; and there shall be elected annually, thereafter, one canal commissioner, who shall hold his office for three years.

Canal commissioners.

SECTION 4.

Three inspectors of state prisons shall be elected at the general election, which shall be held next after the adoption of this constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The governor, secretary of state and comptroller, shall meet at the capitol on the first Monday of January next succeeding such election, and determine by lot which of said inspectors shall hold his office for one year, which for two, and which for three years; and there shall be elected annually thereafter, one inspector of state prisons, who shall hold his office for three years; said inspectors shall have the charge and superintendence of the state prisons, and shall appoint all the officers therein. All vacancies in the office of such inspector shall be filled by the governor, till the next election.

Inspectors of state prisons.

SECTION 5.

The lieutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor, shall be the commissioners of the land office.

Commissioners of the land office.

The lieutenant-governor, secretary of state, comptroller, treasurer and attorney-general shall be the commissioners of the canal fund.

Commissioners of the canal fund.

The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor, and the canal commissioners.

Canal board.

SECTION 6.

The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

Powers and duties of boards and officers.

SECTION 7.

Treasurer
may be sus-
pended by
the gov-
ernor.

The treasurer may be suspended from office by the governor, during the recess of the legislature and until thirty days after the commencement of the next session of the legislature, whenever it shall appear to him that such treasurer has, in any particular, violated his duty. The governor shall appoint a competent person to discharge the duties of the office, during such suspension of the treasurer.

SECTION 8.

Certain
offices abol-
ished.

All offices for the weighing, gauging, measuring, culling or inspecting any merchandize, produce, manufacture or commodity, whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained, shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

17 N. Y., 141.

ARTICLE VI.

SECTION 1.

Impeach-
ment.

The assembly shall have the power of impeachment, by the vote of the majority of all the members elected. The court for the trial of impeachments, shall be composed of the president of the senate, the senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor, the lieutenant-governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment, according to evidence; and no person shall be convicted, without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

SECTION 2.

Court of
appeals.

There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court having the shortest time to serve. Provision shall be made by law, for designating one of the number elected, as chief judge, and for selecting such justices of the

supreme court, from time to time, and for so classifying those elected, that one shall be elected every second year.

1 N. Y., 17; 3 N. Y., 547.

SECTION 3.

There shall be a supreme court having general jurisdiction in law and equity.

Supreme court.

21 B., 424; 2 N. Y., 186; 13 N. Y., 468

SECTION 4.

The state shall be divided into eight judicial districts, of which the city of New York shall be one; the others to be bounded by county lines, and to be compact and equal in population as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New York, as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such judges in the residue of the state, in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

Judicial districts.

SECTION 5.

The legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed.

Jurisdiction, &c., may be altered.

17 N. Y., 270.

SECTION 6.

Provision may be made, by law, for designating, from time to time, one or more of the said justices, who is not a judge of the court of appeals, to preside at the general terms of the said court to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated shall always be one, may hold such general terms. And any one or more of the justices may hold special terms, and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

Presiding justice.

Who may hold courts.

SECTION 7.

The judges of the court of appeals and justices of the supreme court shall severally receive, at stated times, for their services, a compensation, to be established by law, which shall not be increased or diminished during their continuance in office.

Compensation to judges.

15 B., 529.

SECTION 8.

They shall not hold any other office or public trust. All votes for either of them for any elective office (except that of justice of the supreme court or judge of the court of appeals)

Judges to hold no other office.

Their removal.

elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges, or justices of inferior courts, not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defence by such county, city, or state courts as may be prescribed by law, for causes to be assigned in the order of removal.

17 N. Y., 370.

SECTION 18.

Judicial officers of cities, &c.

All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the legislature may direct.

SECTION 19.

Clerks of supreme court and of appeals.

Clerks of the several counties of this state shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. A clerk of the court of appeals, to be *ex officio* clerk of the supreme court, and to keep his office at the seat of government, shall be chosen by the electors of the state; he shall hold his office for three years, and his compensation shall be fixed by law and paid out of the public treasury.

SECTION 20.

No fees to judicial officers.

No judicial officer, except justices of the peace shall receive, to his own use, any fees or perquisites of office.

SECTION 21.

Appeals from local courts.

The legislature may authorize the judgments, decrees and decisions of any local inferior court of record, of original civil jurisdiction, established in a city, to be removed, for review, directly into the court of appeals.

SECTION 22.

Publication of laws.

The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

SECTION 23.

Tribunals of conciliation.

Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law.

SECTION 24.

Revision of practice.

The legislature, at its first session after the adoption of this constitution, shall provide for the appointment of three

commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules of practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature, subject to their adoption and modification from time to time.

SECTION 25.

The legislature, at its first session after the adoption of this constitution shall provide for the organization of the court of appeals, and for transferring to it the business pending in the court for the correction of errors, and for the allowance of writs of error and appeals to the court of appeals from the judgments and decrees of the present court of chancery and supreme court, and of the courts that may be organized under this constitution.

Organiza-
tion of
court of
appeals.

ARTICLE VII.

SECTION 1.

After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart, in each fiscal year, out of the revenues of the state canals, in each year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of one million and three hundred thousand dollars, until the first day of June, one thousand eight hundred and fifty-five, and from that time, the sum of one million and seven hundred thousand dollars, in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars, then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

Canal debt
sinking
fund.

SECTION 2.

After complying with the provisions of the first section of this article there shall be appropriated and set apart out of the surplus revenues of the state canals in each fiscal year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt; and after that period, then the sum of one million and five hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the general fund debt, including the debt for loans of the state credit to railroad companies, which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever, and as far

General
fund debt
sinking
fund.

Their removal.

elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges, or justices of inferior courts, not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defence by such county, city, or state courts as may be prescribed by law, for causes to be assigned in the order of removal.

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Organiza-
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Canal debt
sinking
fund.

SECTION 2.

After complying with the provisions of the first section of this article there shall be appropriated and set apart out of the surplus revenues of the state canals in each fiscal year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt; and after that period, then the sum of one million and five hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the general fund debt, including the debt for loans of the state credit to railroad companies, which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever, and as far

General
fund debt
sinking
fund.

as any part thereof may become a charge on the treasury or general fund until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the moneys to the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon at the then current rate, shall be paid to the last mentioned sinking fund, as soon as it can be done consistently, with the just rights of the creditors holding said canal debt.

SECTION 3.

Surplus
revenues
of canals.

After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be paid out of the surplus revenues of the canals to the treasury of the state, on or before the thirtieth day of September in each year, for the use and benefit of the general fund, such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of the state; and the remainder of the revenues of the said canals shall in each fiscal year be applied in such manner as the legislature shall direct to the completion of the Erie canal enlargement and the Genesee Valley and Black River canals, until the said canals shall be completed.

If at any time after the period of eight years from the adoption of this constitution, the revenues of the state, unappropriated by this article, shall not be sufficient to defray the necessary expenses of the government, without continuing or laying a direct tax, the legislature may, at its discretion, supply the deficiency in whole or in part from the surplus revenues of the canals, after complying with the provisions of the first two sections of this article for paying the interest and extinguishing the principal of the canal and general fund debt; but the sum thus appropriated from the surplus revenues of the canals shall not exceed annually three hundred and fifty thousand dollars, including the sum of two hundred thousand dollars provided for by this section for the expenses of the government, until the general fund debt shall be extinguished, or until the Erie canal enlargement and Genesee Valley and Black River canals shall be completed, and after that debt shall be paid, or the said canals shall be completed, then the sum of six hundred and seventy-two thousand five hundred dollars, or so much thereof as shall be necessary, may be annually appropriated to defray the expenses of the government.

7 N. Y., 9, 83; 19 B., 291.

SECTION 4.

Loans to
companies.

The claims of the state against any incorporated company to pay the interest and redeem the principal of the stock of the state, loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys

arising from such claims shall be set apart and applied as part of the sinking fund provided in the second section of this article. But the time limited for the fulfilment of any condition of any release or compromise heretofore made or provided for, may be extended by law.

SECTION 5.

If the sinking funds, or either of them, provided in this article, shall prove insufficient to enable the state, on the credit of such fund to procure the means to satisfy the claims of the creditors of the state, as they become payable, the legislature shall, by equitable taxes, so increase the revenues of the said funds as to make them, respectively, sufficient perfectly to preserve the public faith. Every contribution or advance to the canals or their debt from any source other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the treasury for the use of the state, out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.

Deficiency
in sinking
funds.

SECTION 6.

The legislature shall not sell, lease, or otherwise dispose of any of the canals of the state, but they shall remain the property of the state, and under its management forever.

Canals not
to be sold.

SECTION 7.

The legislature shall never sell or dispose of the salt springs belonging to this state. The lands contiguous thereto, and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law, and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

Salt springs
not to be
sold.

7 B., 599; 6 N. Y., 74; 12 N. Y., 603.

SECTION 8.

No moneys shall ever be paid out of the treasury of this state or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law, making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Appropriation
bills.

3 D., 381; 3 N. Y., 294; 8 N. Y., 317.

SECTION 9.

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association or corporation.

State credit
not to be
loaned.

SECTION 10.

Power to
incur debt.

The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts, shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

SECTION 11.

Debts to
repel inva-
sion, &c.

In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection or defend the state in war, but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

SECTION 12.

Limitation
of power to
incur debt.

Except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, to pay and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election.

On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes to be duly entered on the journals thereof, and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?"

The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability, which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected until the proceeds thereof shall have made the provision herein before specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan or stock creating such debt or liability, shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever.

No such law shall be submitted to be voted on within three months after its passage or at any general election, when any other law or any bill or any amendment to the constitution shall be submitted to be voted for or against.

SECTION 13.

Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object. Acts imposing tax.

SECTION 14.

On the final passage in either house of the legislature of every act, which imposes, continues or revives a tax, or creates a debt or charge or makes, continues or revives any appropriation of public or trust money, or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three-fifths of all the members elected to either house, shall, in all such cases, be necessary to constitute a quorum therein. Ibid.

8 N. Y., 241, 317; 13 N. Y., 143; 19 N. Y., 116; 17 N. Y., 235.

ARTICLE VIII.

SECTION 1.

Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed. Corporations, how created.

26 B., 657; 15 B., 657; 16 B., 188; 20 B., 119.

SECTION 2.

Dues from corporations shall be secured by such individual liability of the corporators and other means, as may be prescribed by law. Debts of corporations.

SECTION 3.

The term corporation, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued in all courts, in like cases, as natural persons. "Corporations" defined.

14 B., 559; 6 Pai., 554; 14 B., 405; 1 B. C. R., 547.

SECTION 4.

The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws. Bank charters.

SECTION 5.

Specie payments.

The legislature shall have no power to pass any law sanctioning, in any manner, directly or indirectly, the suspension of specie payments by any person, association, or corporation issuing bank notes of any description.

SECTION 6.

Bank notes.

The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

SECTION 7.

Individual liability of stockholders.

The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits, to circulate as money, after the first day of January, one thousand eight hundred and fifty, shall be individually responsible, to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind contracted after said first day of January, one thousand eight hundred and fifty.

8 Cow., 387; 24 W., 473; 18 N. Y., 199.

SECTION 8.

Bill holders.

In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

SECTION 9.

Cities and villages.

It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

10 W., 547; 5 H., 121; 15 N. Y., 297, 532; 18 N. Y., 38; 24 B., 446, 232.

ARTICLE IX.

SECTION 1.

Funds for education.

The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund shall be respectively preserved inviolate. The revenues of the said common school fund shall be applied to the support of common schools; the revenues of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common school fund.

13 B., 400.

ARTICLE X.

SECTION 1.

Sheriffs, clerks of counties, including the register, and clerk of the city and county of New York, coroners, and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff.

County officers.

The governor may remove any officer in this section mentioned within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

2 W., 266; 11 W., 511.

SECTION 2.

All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors or other county authorities, as the legislature shall direct. All city, town and village officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the legislature may direct.

County officers.

City and town officers.

Other officers.

25 B., 532; 15 N. Y., 532; 2 B., 517; 7 B., 30.

SECTION 3.

When the duration of any office is not provided by this constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Duration of office.

SECTION 4.

The time of electing all officers named in this article shall be prescribed by law.

Time of election.

SECTION 5.

The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy, shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Vacancies.

24 W., 215.

SECTION 6.

Political
year.

The political year and legislative term shall begin on the first day of January, and the legislature shall, every year, assemble on the first Tuesday in January, unless a different day shall be appointed by law.

SECTION 7.

Removals
from office.

Provision shall be made by law for the removal for misconduct or malversation in office, of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

SECTION 8.

When office
vacant.

The legislature may declare the cases in which any office shall be deemed vacant, when no provision is made for that purpose in this constitution.

ARTICLE XI.

SECTION 1.

Militia.

The militia of this state shall, at all times hereafter, be armed and disciplined and in readiness for service; but all such inhabitants of this state of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom upon such conditions as shall be prescribed by law.

SECTION 2.

Militia
officers,
how ap-
pointed.

Militia officers shall be chosen or appointed as follows: Captains, subalterns and non-commissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions by the written votes of the commissioned officers of the respective regiments and separate battalions; brigadier-generals and brigade inspectors by the field officers of their respective brigades; major-generals, brigadier-generals and commanding officers of regiments or separate battalions, shall appoint the staff officers to their respective divisions, brigades, regiments or separate battalions.

SECTION 3.

Ibid.

Tenure of
office.

The governor shall nominate, and with the consent of the senate, appoint all major-generals and the commissary-general. The adjutant-general and other chiefs of staff departments, and the aids-de-camp of the commander-in-chief shall be appointed by the governor, and their commissions shall expire with the time for which the governor shall have been elected. The commissary-general shall hold his office for two years. He shall give security for the faithful execution of the duties of his office, in such manner and amount as shall be prescribed by law.

SECTION 4.

The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the governor.

Time and manner of election.

SECTION 5.

The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officer shall be removed from office unless by the Senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial, pursuant to law. The present officers of the militia shall hold their commissions, subject to removal, as before provided.

Officers, how commissioned. And removed.

SECTION 6.

In case the mode of election and appointment of militia officers hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two-thirds of the members present in each house shall concur therein.

Election may be abolished.

ARTICLE XII.

SECTION 1.

Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

Oath of Office.

"I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of New York; and that I will faithfully discharge the duties of the office of, according to the best of my ability."

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

ARTICLE XIII.

SECTION 1.

Any amendment or amendments to this constitution may be proposed in the senate and assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and referred to the legislature, to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the legislature so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or

Amendments.

amendments to the people, in such manner and at such times as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution.

SECTION 2.

Future
conven-
tions.

At the general election, to be held in the year eighteen hundred and sixty-six, and in each twentieth year thereafter, and also at such time as the legislature may by law provide, the question "shall there be a convention to revise the constitution and amend the same?" shall be decided by the electors qualified to vote for members of the legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the legislature at its next session shall provide by law for the election of delegates to such convention.

ARTICLE XIV.

SECTION 1.

First elec-
tion of
legislature.

The first election of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-seven.

The senators and members of assembly who may be in office on the first day of January, one thousand eight hundred and forty-seven, shall hold their offices until and including the thirty-first day of December following, and no longer.

SECTION 2.

First elec-
tion of gov-
ernor and
lieutenant-
governor.

The first election of governor and lieutenant-governor, under this constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-eight; and the governor and lieutenant-governor in office when this constitution shall take effect shall hold their respective offices until and including the thirty-first day of December of that year.

SECTION 3.

State offi-
cers to re-
main in
office.

The secretary of state, comptroller, treasurer, attorney-general, district attorneys, surveyor-general, canal commissioners, and inspectors of state prisons, in office when this constitution shall take effect shall hold their respective offices until and including the thirty-first day of December, one thousand eight hundred and forty-seven, and no longer.

SECTION 4.

First elec-
tion of
judges.

The first election of judges and clerk of the court of appeals, justices of the supreme court, and county judges, shall take place at such time, between the first Tuesday of April and the second Tuesday of June, one thousand eight

hundred and forty-seven, as may be prescribed by law. The said courts shall, respectively, enter upon their duties on the first Monday of July next thereafter; but the term of office of said judges, clerk and justices, as declared by this constitution, shall be deemed to commence on the first day of January, one thousand eight hundred and forty-eight.

SECTION 5.

On the first Monday of July, one thousand eight hundred and forty-seven, jurisdiction of all suits and proceedings then pending in the present supreme court and court of chancery, and all suits and proceedings originally commenced and then pending in any court of common pleas (except in the city and county of New York) shall become vested in the supreme court hereby established. Proceedings pending in courts of common pleas and in suits originally commenced in justices' courts shall be transferred to the county courts provided for in this constitution, in such manner and form and under such regulations as shall be provided by law. The courts of oyer and terminer hereby established shall, in their respective counties, have jurisdiction on and after the day last mentioned of all indictments and proceedings then pending in the present courts of oyer and terminer, and also of all indictments and proceedings then pending in the present courts of general sessions of the peace, except in the city of New York, and except in cases of which the courts of sessions, hereby established may lawfully take cognizance; and of such indictments and proceedings the courts of sessions, hereby established, shall have jurisdiction on and after the day last mentioned.

Transfer of jurisdiction.

1 B., 643.

SECTION 6.

The chancellor and the present supreme court shall, respectively, have power to hear and determine any of such suits and proceedings ready, on the first Monday of July, one thousand eight hundred and forty-seven, for hearing or decision, and shall, for their services therein, be entitled to their present rates of compensation until the first day of July, one thousand eight hundred and forty-eight, or until all such suits and proceedings shall be sooner heard and determined. Masters in chancery may continue to exercise the functions of their offices in the court of chancery so long as the chancellor shall continue to exercise the functions of his office under the provisions of this constitution.

Present courts continued.

And the supreme court hereby established shall also have power to hear and determine such of said suits and proceedings as may be prescribed by law.

SECTION 7.

In case any vacancy shall occur in the office of chancellor or justice of the present supreme court previously to the first

Vacancies in the existing courts.

day of July, one thousand eight hundred and forty-eight, the governor may nominate and by and with the advice and consent of the senate appoint a proper person to fill such vacancy. Any judge of the court of appeals or justice of the supreme court, elected under this constitution, may receive and hold such appointment.

SECTION 8.

Offices
abolished.

The offices of chancellor, justices of the existing supreme court, circuit judge, vice-chancellor, assistant vice-chancellor, judge of the existing county courts of each county, supreme court commissioner, master in chancery, examiner in chancery and surrogate (except as herein otherwise provided), are abolished from and after the first Monday of July, one thousand eight hundred and forty-seven (1847).

3 B., 332.

SECTION 9.

Judges
eligible to
office.

The chancellor, the justices of the present supreme court, and the circuit judges are hereby declared to be severally eligible to any office at the first election under this constitution.

SECTION 10.

Sheriffs,
&c., to hold
office.

Sheriffs, clerks of counties (including the register and clerk of the city and county of New York) and justices of the peace, and coroners in office when this constitution shall take effect, shall hold their respective office until the expiration of the term for which they were respectively elected.

SECTION 11.

Officers
may receive
fees.

Judicial officers in office when this constitution shall take effect, may continue to receive such fees and perquisites of office as are now authorized by law, until the first day of July, one thousand eight hundred and forty-seven, notwithstanding the provisions of the twentieth section of the sixth article of this constitution.

SECTION 12.

Local courts
to continue.

All local courts established in any city or village, including the superior court, common pleas, sessions and surrogate's courts of the city and county of New York, shall remain until otherwise directed by the legislature with their present powers and jurisdictions; and the judges of such courts and any clerks thereof in office on the first day of January, one thousand eight hundred and forty-seven, shall continue in office until the expiration of their terms of office, or until the legislature shall otherwise direct.

SECTION 13.

Constitution
goes into effect.

This constitution shall be in force from and including the first day of January, one thousand eight hundred and forty-seven, except as herein otherwise provided.

Done in convention at the capitol in the city of Albany, the ninth day of October, in the year one thousand eight hundred and forty-six, and of the independence of the United States of America the seventy-first.

In witness whereof, we have hereunto subscribed our names.

JOHN TRACY.

President, and delegate from the county of Chenango.

JAMES F. STARBUCK,	}	<i>Secretaries.</i>
H. W. STRONG,		
FR. SEGER,		

AMENDMENT TO THE CONSTITUTION.

[The following amendment was proposed by the legislature in 1853, agreed to by the legislature in 1854, and approved and ratified by the people at an election held on the 14th day of February, 1854.]

Substitute for section three of article seven, the following:

After paying the said expenses of collection, superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be appropriated and set apart in each fiscal year, out of the surplus revenues of the canals, as a sinking fund, a sum sufficient to pay the interest as it falls due, and extinguish the principal within eighteen years, of any loan made under this section; and if the said sinking fund shall not be sufficient to redeem any part of the principal at the stipulated times of payment, or to pay any part of the interest of such loans as stipulated, the means to satisfy any such deficiency shall be procured on the credit of the said sinking fund. After complying with the foregoing provisions, there shall be paid annually out of said revenues, into the treasury of the state, two hundred thousand dollars, to defray the necessary expenses of government. The remainder shall, in each fiscal year, be applied to meet appropriations for the enlargement and completion of the canals mentioned in this section, until the said canals shall be completed. In each fiscal year thereafter the remainder shall be disposed of in such manner as the legislature may direct; but shall at no time be anticipated or pledged for more than one year in advance. The legislature shall, annually, during the next four years, appropriate to the enlargement of the Erie, the Oswego, the Cayuga and Seneca canals and to the completion of the Black River and Genesee Valley canals, and for the enlargement of the locks of the Champlain canal, whenever from dilapidation or decay it shall be necessary to rebuild them, a sum not exceeding two millions

two hundred and fifty thousand dollars. The remainder of the revenues of the canals, for the current fiscal year in which such appropriation is made, shall be applied to meet such appropriation ; and if the same shall be deemed insufficient, the legislature shall, at the same session, provide for the deficiency by loan. The legislature shall also borrow one million and five hundred thousand dollars, to refund to the holders of the canal revenue certificates issued under the provisions of chapter four hundred and eighty-five of the Laws of the year one thousand eight hundred and fifty-one, the amount received into the treasury thereon ; but no interest to accrue after July first, one thousand eight hundred and fifty-five, shall be paid on such certificates. The provisions of section twelve of this article, requiring every law for borrowing money to be submitted to the people, shall not apply to the loans authorized by this section. No part of the revenues of the canals, or of the funds borrowed under this section, shall be paid or applied upon or in consequence of any alleged contract made under chapter four hundred and eighty-five of the Laws of the year one thousand eight hundred and fifty-one, except to pay for work done or materials furnished prior to the first day of June, one thousand eight hundred and fifty-two. The rates of toll on persons and property transported on the canals, shall not be reduced below those for the year one thousand eight hundred and fifty-two, except by the canal board with the concurrence of the legislature. All contracts for work or materials on any canal shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance.

ACTS

RELATIVE TO

THE REVISED STATUTES.

AN ACT concerning the Revised Statutes.

PASSED December 10, 1828.

The People of the State of New-York, represented in Senate and Assembly, do declare and enact as follows:

§ 1. The act passed on the fourth day of December, one thousand eight hundred and twenty-seven, entitled "An act concerning the territorial limits and divisions, the civil polity, and the internal administration of this state," consisting of twenty Chapters, shall be known and distinguished as the First Part of the Revised Statutes. First part of the Revised Statutes.

§ 2. The act passed at the present meeting of the legislature entitled "An act relative to the acquisition, the enjoyment and the transmission of property, real and personal; to the domestic relations, and other matters connected with private rights," consisting of eight Chapters, the first of which was passed at the present meeting of the legislature, and the other Chapters were passed on the fourth day of December, one thousand eight hundred and twenty-seven, shall be known and distinguished as the Second Part of the Revised Statutes. Second part

§ 3. The act passed at the present meeting of the legislature, entitled "An act concerning courts and ministers of justice, and proceedings in civil cases," consisting of ten Chapters, shall be known and distinguished as the Third Part of the Revised Statutes. Third part

§ 4. The act passed at the present meeting of the legislature, entitled "An act concerning crimes and punishments; proceedings in criminal cases; and prison discipline," consisting of three Chapters, shall be known and distinguished as the Fourth Part of the Revised Statutes. Fourth part

Chapters
which took
effect in
January,
1898.

§ 5. The following Chapters and parts of Chapters, of the said First Part of the Revised Statutes, as originally passed, are declared to have commenced and taken effect on the first day of January, one thousand eight hundred and twenty-eight, viz.:

1. Chapter six, entitled "Of elections, other than for militia and town officers:"

2. Chapter eight, entitled "Of the duties of the executive officers of the state, and of various matters connected with their respective departments:"

3. Chapter nine, entitled "Of the funds, revenue, expenditures and property of the state, and the administration thereof," except section one hundred and eighty-six, of the ninth Title thereof, originally passed as section one hundred and eighty-one, which section shall take effect on the first day of January, one thousand eight hundred and twenty-nine; and the forfeiture therein mentioned, shall not take effect until six months after the said section shall be in force as a law.

4. Chapter ten, entitled "Of the militia and the public defence:"

5. Chapter thirteen, entitled "Of the assessment and collection of taxes:"

6. Chapter fourteen, entitled "Of the public health:"

7. The second Title of Chapter fifteen, entitled "Of public instruction," which Title relates to the common schools:

8. Chapter sixteen, entitled "Of highways, bridges and ferries:"

9. Chapter eighteen, entitled "Of incorporations."

Ib., May,
1898.

§ 6. The seventeenth Chapter of the said First Part of the Revised Statutes, entitled "Of the regulation of trade in certain cases," as the same was originally passed, is declared to have commenced and taken effect on the first day of May, one thousand eight hundred and twenty-eight.

Additions
and altera-
tions.

§ 7. The additions and alterations, in the Chapters enumerated in the two preceding sections, made in pursuance of acts of the legislature, are declared to have taken effect at the several times when the statutes directing such additions and alterations, were respectively passed.

Chapters to
take effect
in January,
1898.

§ 8. The remaining Chapters and parts of Chapters of the said Revised Statutes, not specified in the three last preceding sections, and respecting the commencement of which no direction is herein before given, shall severally commence and take effect as laws, on the first day of January, one thousand eight hundred and thirty.

Construc-
tion of term
"laws now
in force."

§ 9. The term "laws now in force," whenever it occurs in the Revised Statutes, shall be construed to mean the statutes and other laws in force immediately previous to the final passage of the Chapter containing such term.

Ib., terms
"hereto-
fore" and
"here-
after."

§ 10. Whenever the term "heretofore" occurs in any Chapter or Title of the Revised Statutes, it shall be construed to mean any time previous to the day when such Chapter or

Title shall commence and take effect; and whenever the term "hereafter" occurs, it shall be construed to mean the time after such Chapter or Title shall commence and take effect.

§ 11. Whenever in the Revised Statutes, or in any other statute, words importing the plural number, are used in describing or referring to, any matters, parties or persons, any single matter, party or person, shall be deemed to be included, although distributive words may not be used; and when any subject, matter, party or person, is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included; and these rules of construction shall apply in all cases, unless it be otherwise specially provided, or unless there be something in the subject or context repugnant to such construction.

Ib., plural words, &c.

§ 12. For the purposes of construction, the said Revised Statutes shall be deemed to have been passed on the same day, notwithstanding they may have passed or taken effect at different times; but if any provisions in the different parts or chapters are repugnant to each other, that which shall be the last in the order herein before declared, shall prevail, and so much of any prior provision as is inconsistent with such last provision, shall be deemed repealed thereby.

Ib., repugnant provisions, &c.

§ 13. When the printing of the Revised Statutes shall be completed, the revisers, or any two of them, shall certify the same to have been examined and compared by them with the original acts, and with the acts amending such originals; and shall deposit a copy so certified, in the office of the secretary of state, which shall be conclusive evidence of such statutes.

Revised Statutes to be certified.

§ 14. Such certificate shall be printed in each copy of the Revised Statutes published under the direction of the revisers: and every copy so printed by the printers employed for that purpose, in which such certificate shall be inserted, may be read in evidence in all courts of justice, and in all proceedings before any officer, board or body, in this state.

Certificate, how to be published.

§ 15. This act shall be published with, and as a part of the Revised Statutes.

This act, how published.

AN ACT to repeal certain Acts and parts of Acts.

Passed December 10, 1828.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. From and after the thirty-first day of December, in the year one thousand eight hundred and twenty-nine, the following acts and parts of acts, heretofore passed by the legislature of this state shall be repealed, viz.:

Certain statutes and parts of statutes repealed from and after the 31st Dec. 1828.

[Here follows an enumeration of the statutes and parts of statutes repealed.]

Nothing in this act to be construed as repealing Revised Statutes, &c.

§ 2. Nothing herein contained, shall be construed to repeal any statute consolidated and published in the Revised Statutes; nor any act of the legislature passed since the ninth day of September, one thousand eight hundred and twenty-eight, unless such act be consolidated and re-enacted in the said Revised Statutes.*

Statutes of England and Great-Britain, not in force.

§ 3. None of the statutes of England or Great Britain shall be considered as laws of this state; nor shall they be deemed to have had any force or effect in this state, since the first day of May, in the year one thousand seven hundred and eighty-eight.

Nor statutes of colony of New-York. Saving clause, as to acts done, rights accrued, &c.

§ 4. No statute passed by the government of the late colony of New-York, shall be considered as a law of this state.

§ 5. The repeal of any statutory provision by this act, shall not affect any act done, or right accrued or established, or any proceeding, suit or prosecution had or commenced in any civil case, previous to the time when such repeal shall take effect; but every such act, right and proceeding, shall remain as valid and effectual as if the provision so repealed, had remained in force.

Ib., as to offences committed, or penalties incurred.

§ 6. No offence committed, and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, shall be affected by such repeal; except that where any punishment, forfeiture or penalty shall have been mitigated by the provisions of the Revised Statutes, such provisions shall apply to and control any judgment to be pronounced after the said statutes shall take effect, for any offence committed before that time.

Ib., as to prosecutions for offences or penalties.

§ 7. No prosecution for any offence, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, shall be affected by such repeal; but the same shall proceed in all respects, as if such provision had not been repealed; except that all such proceedings had after the time when the Revised Statutes take effect, shall be conducted according to the provisions of the said statutes, and shall be in all respects subject to the said provisions.

Statutes heretofore repealed, to continue so repealed.

§ 8. All statutes and parts of statutes which were repealed or abrogated by, or were repugnant to, any law hereby repealed, and which have not been re-enacted and consolidated in the Revised Statutes, shall continue to be so repealed, and shall be deemed abrogated.

Though repealed by this act.

§ 9. The repeal by this act, of any statute or part of a statute heretofore repealed, shall not be construed as a declaration or implication that such statute or part of a statute has been in force at any time subsequent to such first repeal.

* The statutes spoken of in the first clause of this section as "*published in the Revised Statutes*," are those portions of the First Part which took effect on the 1st of January and 1st of May, 1828, and which were *published* by the state printer in December, 1827.

§ 10. Where any statute not hereby repealed, refers to and adopts any statute or part of a statute which is herein repealed, the statute or part of a statute so referred to and adopted, shall not be deemed repealed by the provisions of this act, but shall be in force so far only as the same shall have been so adopted, and for no other purpose, and subject to the provisions of the two next sections.

Rule of construction where a statute not repealed refers to a repealed statute.

§ 11. But if the statute or part of a statute so referred to and adopted, shall have been revised and consolidated in the Revised Statutes, all provisions contained therein repugnant to, or inconsistent with those of the said Revised Statutes, shall be deemed repealed at the time specified in this act; and every such provision so referred to and adopted, which shall be modified by the Revised Statutes, shall be deemed to be so modified in respect to any use or purpose, for which such provision is herein declared to be in force, from and after the time when the Revised Statutes shall take effect.

Ib., where the statute so referred to, has been revised.

§ 12. Where any statute or part of a statute, which is not hereby repealed, refers to and adopts any provision or rule of law which is abrogated or modified by the Revised Statutes, such provision or rule shall be deemed to be so abrogated or modified, as the case may be, as well in respect to such statute or part of a statute not repealed, as otherwise, from and after the time when the Revised Statutes shall take effect.

Ib., where a rule of law is referred to which has been abrogated.

§ 13. The seventh section of the "act concerning the Revised Statutes, passed at the present meeting of the legislature," passed December 4, 1827, is hereby repealed; together with so much of the said act, as declares that the Chapters of the First and Second Parts of the Revised Statutes therein specified, shall commence and take effect on the first day of January, one thousand eight hundred and twenty-nine.

Certain provisions in former acts repealed.

§ 14. The repeal by this act of any statutory provision, which is consolidated and re-enacted in the Revised Statutes, by virtue of which any appointment shall have been made, or any office is or shall be held, shall not be construed to vacate such office, or in any way affect such appointment; but the said appointments shall continue, and the said offices shall be held subject to the provisions of law in force after the repeal of such statutory provision.

Appointments made under acts repealed, not to be affected.

§ 15. But where any office is abolished by the repeal of any act, and such act is not consolidated and re-enacted in the Revised Statutes, such office shall cease at the time such repeal shall take effect.

Provision as to offices abolished by such repeal.

AN ACT relative to the printing of the Revised Statutes.

Passed April 19, 1830.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

Revised
Statutes
may be
printed.

Certificate
of secretary
of state.

§ 1. Any person or persons residing in the state of New-York may print and publish the whole or any part of the Revised Statutes of this state; but to entitle any copy of a law so published to be read in evidence, there shall be contained in the same book or pamphlet a printed certificate of the secretary of state, or of two of the Revisers, that such copy is a correct transcript of the text of the Revised Statutes, as published, except such typographical errors in the original as may be corrected in such copy, and except such parts as shall have been altered by acts of the legislature; and that with respect to such parts it conforms to the acts by which such alterations shall have been made.

Paging to
be pre-
served.

§ 2. The editions to be printed under the provisions of this act shall be paged in conformity to the first edition published under the authority of this state.

REVISED STATUTES

[61]

OF THE

STATE OF NEW YORK.

PART I.

AN ACT concerning the territorial limits and divisions, the civil polity, and the internal administration of this State.

WHEREAS it is expedient that the several statutes of this state, relating to its territorial limits and divisions, its civil polity, and its internal administration, should be consolidated and arranged in appropriate chapters, titles and articles; that the language thereof should be simplified; and that omissions and other defects should be supplied and amended: Therefore,

The People of the State of New-York, represented in Senate and Assembly, do declare and enact as follows:

CHAP. I.

Of the Boundaries of the State and its Territorial Jurisdiction.

(Took effect 1 January, 1880.)

TITLE 1. — Of the boundaries of the State.

TITLE 2. — Of the sovereignty and jurisdiction of the State.

TITLE 3. — Of the places ceded to the United States.

TITLE 1.

TITLE I.

OF THE BOUNDARIES OF THE STATE.

SEC. 1. Description of the boundaries of the state.

Preamble.

Boundaries.

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Eastern.

SECTION 1. It being deemed useful for the information of the citizens and officers of this state, that its boundaries, so far as its jurisdiction is now asserted, should be declared, it is therefore declared, that the state of New-York is bounded as follows: Beginning at Lyon's point in the mouth of a brook or river called Byram river, where it falls into Long-Island Sound, and running thence up along said river to a rock at the ancient road or wading place in said river, which rock bears north twelve degrees and forty-five minutes east, five hundred and fifty rods from said point; then north twenty-three degrees and forty-five minutes west, two thousand two hundred and ninety-two rods; then east-north-east thirteen miles and sixty-four rods, which lines were established in the year one thousand seven hundred and twenty-five, by Francis Harrison, Cadwallader Colden, and Isaac Hicks, commissioners on the part of the then province of New-York, and Jonathan Law, Samuel Eells, Roger Wolcott, John Copp, and Edmund Lewis, commissioners on the part of the then colony of Connecticut, and were run as the magnetic needle then pointed: then along an east-north-east continuation of the last mentioned course, one mile three-quarters of a mile and twenty-one rods to a monument erected in the year one thousand seven hundred and thirty-one, by Cadwallader Colden, Gilbert Willet, Vincent Matthews, and Jacobus Bruyn junior, commissioners on the part of said province, and Samuel Eells, Roger Wolcott and Edmund Lewis, commissioners on the part of said colony; which said monument is at the south-east corner of a tract, known and distinguished as the oblong or equivalent lands; then north twenty-four degrees and thirty minutes west, until intersected by a line run by said last mentioned commissioners on a course south twelve degrees and thirty minutes west, from a monument erected by them in the south bounds of Massachusetts; which monument stands in a valley in the Taghkanick mountains, one hundred and twenty-one rods eastward from a heap of stones, in said bounds on the top or ridge of the most westerly of said mountains; then north twelve degrees and thirty minutes east, from a monument, erected by said last mentioned commissioners at said place of intersection and standing on the north side of a hill south-easterly from the easternmost end of the long pond, along the aforesaid line to the aforesaid monument erected in the south bounds of Massachusetts, being the north-east corner of the oblong; then west nine degrees south along the north bounds of the oblong, one mile three-quarters of a mile twenty-one rods and five links, to a monument erected by said commissioners at the northwest corner of the oblong, and at the distance of twenty

miles from Hudson's river; which four last mentioned lines were established by said last mentioned commissioners, and were run by them as the magnetic needle pointed in the year one thousand seven hundred and thirty-one; then north fifteen degrees twelve minutes and nine seconds east, along the line established in the year one thousand seven hundred and eighty-seven, by Thomas Hutchins, John Ewing, and David Rittenhouse, commissioners appointed by the United States in congress assembled, fifty miles forty-one chains and seventy-nine links, to a red or black oak tree marked by said commissioners, which said line was run by said last mentioned commissioners as the magnetic needle pointed in the year one thousand seven hundred and eighty-seven; then north eighty-two degrees and twenty minutes west, as the magnetic needle pointed in the year one thousand eight hundred and fourteen, fifty chains to a monument erected for the south-west corner of the state of Vermont, by Smith Thompson, Simeon De Witt and George Tibbits, commissioners on the part of this state, and Joseph Beeman junior, Henry Olin and Joel Pratt second, commissioners on the part of the state of Vermont, which monument stands on the brow of a high hill, descending to the west; then northerly in a straight line to a point which is distant ten chains, on a course south thirty-five degrees west, from the most westerly corner of a lot of land distinguished in the records of the town of Pownal, in the state of Vermont; as the fifth division of the right of Gamaliel Wallace, and which in the year one thousand eight hundred and fourteen, was owned and occupied by Abraham Vosburgh; then north thirty-five degrees east, to said corner, and along the westerly bounds of said lot, thirty chains to a place on the westerly bank of Hosick river, where a hemlock tree heretofore stood, noticed in said records as the most northerly corner of said lot; then north one degree and twenty minutes west, six chains to a monument erected by the said commissioners, standing on the westerly side of Hosick river on the north side of the highway leading out of Hosick into Pownal, and near the north-westerly corner of the bridge crossing said river; then north twenty-seven degrees and twenty minutes east, thirty chains through the bed of the said river, to a large roundish rock on the north-easterly bank thereof; then north twenty-five degrees west, sixteen chains and seventy links; then north nine degrees west, eighteen chains and sixty links to a white oak tree at the south-west corner of the land occupied in one thousand eight hundred and fourteen, by Thomas Wilsey; then north eleven degrees east, seventy-seven chains to the north side of a highway, where it is met by a fence dividing the possession of said Thomas Wilsey junior, and Emery Hunt; then north forty-six degrees east, six chains; then south sixty-six degrees east, twenty-six chains and twenty-five links; then north nine degrees east, twenty-seven chains and fifty links, to a blue slate stone anciently set

TITLE I.

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Northern.

Western.

Southern.

up for the south-west corner of Bennington; then north seven degrees and thirty minutes east, forty-six miles forty-three chains and fifty links to a bunch of hornbeam saplings on the south bank of Poultney river, the northernmost of which was marked by said last mentioned commissioners, and from which a large butternut tree bears north seventy degrees west, thirty links, a large hard maple tree south two chains and eighty-six links, and a white ash tree on the north side of said river, north seventy-seven degrees east; which said several lines from the monument erected for the south-west corner of the state of Vermont, were established by said last mentioned commissioners, and were run by them as the magnetic needle pointed in the year one thousand eight hundred and fourteen; then down the said Poultney river through the deepest channel thereof, to East Bay; then through the middle of the deepest channel of East Bay and the waters thereof, to where the same communicate with Lake Champlain; then through the middle of the deepest channel of Lake Champlain to the eastward of the islands called the Four Brothers, and the westward of the islands called the Grand Isle and Long Isle, or the two Heroes, and to the westward of the Isle-La-Mott, to the line in the forty-fifth degree of north latitude, established by treaty for the boundary line between the United States and the British dominions; then west along said line to the river St. Lawrence; then along the line established by the commissioners appointed under the sixth article of the treaty of Ghent, into and up the said river St. Lawrence to the waters of Lake Ontario; then along the said line through the waters of said lake and of the Niagara river to the waters of Lake Erie; then westerly through the same, and along the said line, until intersected by a meridian line drawn through the most westerly bent or inclination of Lake Ontario; then south along said meridian line to a monument in the beginning of the forty-third degree of north latitude, erected in the year one thousand seven hundred and eighty-seven, by Abraham Hardenburgh and William W. Morris, commissioners on the part of this state, and Andrew Ellicott and Andrew Porter, commissioners on the part of the state of Pennsylvania, for the purpose of marking the termination of the line of jurisdiction between this state and the said state of Pennsylvania; then east along the line established and marked by said last mentioned commissioners to the ninetieth milestone in the same parallel of latitude, erected in the year one thousand seven hundred and eighty-six, by James Clinton and Simeon De Witt, commissioners on the part of this state, and Andrew Ellicott, commissioner on the part of Pennsylvania, which said ninetieth milestone stands on the western side of the south branch of the Tioga river; then east along the line established and marked by said last mentioned commissioners, to a stone erected in the year one thousand seven hundred and seventy-four on a small island in the Delaware river, by Samuel Holland and David

Rittenhouse, commissioners on the part of the colonies of New-York and Pennsylvania, for the purpose of marking the beginning of the forty-third degree of north latitude; then down along said Delaware river to a point opposite to the fork or branch formed by the junction of the stream called Mahackamack with the said Delaware river, in the latitude of forty-one degrees twenty-one minutes and thirty-seven seconds north; then in a straight line to the termination, on the east bank of the Delaware river, of a line run in the year one thousand seven hundred and seventy-four, by William Wickham and Samuel Gale, commissioners on the part of the then colony of New-York, and John Stevens and Walter Rutherford, commissioners on the part of the then colony of New-Jersey; then along said line to a rock on the west side of Hudson's river, in the latitude of forty-one degrees north, marked by said commissioners; then southerly along the west shore, at low water mark, of Hudson's river, of the Kill Van Kull, of the sound between Staten Island and New-Jersey, and of Bariton Bay, to Sandy Hook; and then to the place of beginning, in such manner as to include Staten Island, and the islands of meadow on the west side thereof, Shooter's Island, Long Island, the Isle of Wight, now called Gardiner's Island, Fisher's Island, Shelter Island, Plumb Island, Robin's Island, Ram Island, the Gull Islands, and all the islands and waters in the bay of New-York, and within the bounds above described.

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(NOTE).—In 1834 the boundary line between New-York and New-Jersey was established. See Laws of 1834, p. 8.

TITLE II.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE.

SEC. 1. To what places they extend.

2. Duty of governor and subordinate officers to defend them.
3. Governor to employ counsel to defend suits.
4. District attorney to report to governor persons intruding upon lands.
5. Such persons to be removed by sheriff.

§ 1. The sovereignty and jurisdiction of this state extend Extent. to all the places within the boundaries thereof, as declared in the preceding Title; but the extent of such jurisdiction over places that have been or may be ceded to the United States, shall be qualified by the terms of such cession.

Compiled from documents in the office of the secretary of state.

§ 2. It shall be the duty of the governor, and of all the subordinate officers of the state, to maintain and defend its To be maintained. sovereignty and jurisdiction.

Founded on 1 R. L., 127; Ib., 238; and Laws of 1819, p. 302.

§ 3. If any suit shall be instituted against this state, or Suits to be defended. against any person deriving title therefrom, to recover any lands within this state, under pretence of any claim inconsistent with its sovereignty and jurisdiction, the governor, at

TITLE 1.

the expense of this state, shall employ counsel and provide for the defence of such suit.

Founded on 1 R. L., 127; Ib., 238; and Laws of 1819, p. 302.

Intruders
on public
lands.

§ 4. If any person, under such pretence, shall intrude upon any of the waste or ungranted lands of this state, it shall be the duty of the district attorney of the county, immediately to report the same to the governor, who shall, thereupon, by a written order, direct the sheriff of the county to remove from said lands the person so intruding.

Founded on 1 R. L., 127; Ib., 238; and Laws of 1819, p. 302.

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Duty of
sheriff.

§ 5. The sheriff shall execute such order; and in case of resistance made or threatened, he may call to his aid the power of the county, as in cases of resistance to the writs of the people.

TITLE III.**OF THE PLACES CEDED TO THE UNITED STATES.**

[A particular description of these places, as well those enumerated in the Revised Statutes, as those since ceded will be found in a subsequent volume.]

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CHAP. II.**Of the Civil Divisions of the State.**

(Took effect 1 January, 1830.)

TITLE 1. — Of the several counties of the state.

TITLE 2. — Of the senate districts.

TITLE 3. — Of the congress districts.

TITLE 4. — Of the several towns of this state.

TITLE 5. — Of the several cities in this state.

TITLE 6. — General provisions concerning the erection and alteration of counties, &c.

TITLE I.**OF THE SEVERAL COUNTIES OF THE STATE.**

SECTION 1. The state shall be divided into fifty-six counties, called Suffolk, Queens, Kings, Richmond, New-York, Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, Sullivan, Delaware, Greene, Columbia, Albany, Rensselaer, Schoharie, Schenectady, Saratoga, Montgomery, Hamilton, Washington, Warren, Essex, Clinton, Franklin, St. Lawrence, Herkimer, Oneida, Madison, Oswego, Lewis, Jefferson, Otsego, Chenango, Broome, Cortland, Tompkins, Tioga, Steuben, Onondaga, Cayuga, Seneca, Ontario, Yates, Wayne, Livingston, Monroe, Genesee, Orleans, Niagara, Erie, Allegany, Cattaraugus and Chautauque.

[The residue of this Title, containing the boundaries of the counties above enumerated, and of the counties of Chemung, Fulton, Schuyler and Wyoming (erected since the Revised Statutes were enacted,) will be found in a subsequent volume.]

TITLE II.

TITLE II.

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OF THE SENATE DISTRICTS.

- SEC. 1. Division of the state into eight senate districts.
 2. Districts to be altered at the first session after every census.
 3. To consist of contiguous territory and of whole counties.

[The whole arrangement of senate districts being altered under the constitution of 1846, the first section of this title is omitted.]

§ 2. At the first session after the return of every enumeration to be made of the inhabitants of the state, the senate districts are to be so altered by the legislature, that each district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of colour not taxed.

When and
how altered

§ 3. Each senate district is required at all times to consist of contiguous territory; and no county can be divided in the formation of a senate district.

Territory.

TITLE III.**OF THE CONGRESS DISTRICTS.**

[The arrangement of congress districts as existing in 1863, renders it useless to publish this title.]

TITLE IV.**OF THE SEVERAL TOWNS IN THIS STATE.**

[This title contains a description of each town in the state, and some general provisions concerning the boundary lines between towns. It will be published in a subsequent volume.]

TITLE V.**OF THE SEVERAL CITIES OF THIS STATE.**

[This title contains the boundaries of the several cities in this state and of their respective wards. It will also be published in a subsequent volume.]

TITLE VI.**GENERAL PROVISIONS CONCERNING THE ERECTION AND ALTERATION OF COUNTIES, CITIES, VILLAGES AND TOWNS.**

- SEC. 1. Applicants for new counties, cities or villages, or the alteration of their bounds, to publish notice and furnish a map.
 2. Map to be verified by the oath of the surveyor.
 3. If application granted, map to be filed with surveyor-general.
 4. Applicants for new towns, or alterations or divisions of towns, to affix notice.
 5. Notice to be read at town meeting.
 6. Surveys and maps to be furnished.

§ 1. All persons intending to apply to the legislature for the erection of a new county, or for the incorporation of a city or village; or for any alteration of the bounds of any county, city, or village, shall cause notice to be published of such intended application, as required by law; and shall also procure an accurate survey and map of the territory described in such application.

Certain applicants to publish notice and furnish map.

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See chap. vii, 1st part of R. S., title 3, sec. 1.

CHAP. 4
Map, how
verified. .

§ 2. Such survey and map shall be duly verified by the oath of the surveyor making the same; and shall be laid before the legislature, before any such application shall be acted on.

Where filed.

§ 3. In case any law shall be passed by the legislature, pursuant to such application, the aforesaid survey and map shall be filed in the office of the surveyor-general of this state.

Notice of
applica-
tions to
erect towns,
&c., where
affixed.

§ 4. No town in this state shall be divided or altered in its bounds, nor shall any new town be erected, without an application to the legislature by the inhabitants of such town so to be divided or altered, or of the several towns out of which such new town is to be erected, or some of them; and notice in writing of such intended application, subscribed by at least five persons resident and freeholders in such town or towns shall be affixed on the outer door of the house where the next town-meeting is to be held in each of the towns to be affected thereby, at least ten days previous to the town meeting in each of those towns.

To be read
at town-
meetings.

§ 5. A copy of such notice shall also be read at the town meeting of every town to be affected thereby, to the electors there assembled, by the clerk of the town, immediately before proceeding to the election of town officers.

Map and
survey.

§ 6. The persons applying for the division or alteration of the bounds of any town, or for the erection of a new town, shall also procure such survey and map as is required in the first section of this title, which shall be laid before the legislature, and filed with the surveyor-general, as above provided.

This title is taken chiefly from 1 R. L., p. 269, § 2, and 2 R. L., 135, § 25.

CHAP. III.

Of the Census or Enumeration of the Inhabitants of the State.

[By ch. 140, Laws of 1845, this chapter was repealed, and new regulations for taking the census adopted; but the new law, not being made a part of the Revised Statutes, it is not inserted in this place.]

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CHAP. IV.

Of the Rights of the Citizens and Inhabitants of this State.

(Took effect 1 January, 1880.)

SEC. 1. All authority derived from the people.

2. Taxes, how levied.
3. Right to keep arms.
4. When citizens may be compelled to perform military service.
5. Certain persons to be excused from service.
6. Quartering of soldiers.
7. Rights of citizens secured.
8. Trial by jury preserved; new courts to proceed according to the common law.

SEC. 9. Religious worship to be free.

10. The writ of *habeas corpus* not to be suspended.
11. Search warrants regulated.
12. Accusations for criminal offences, how to be made.
13. Proceedings in criminal cases, and the private right of property.
14. Rights of persons accused of crimes.
15. Justice to be speedily administered, and process to be granted to all persons.
16. Fines to be reasonable and proportioned to the offence.
17. Excessive bail not to be required, nor unusual punishments inflicted.
18. Elections to be free; no one to be disturbed in voting.
19. Right of petitioning declared.
20. Liberty of speech and of the press declared.
21. Truth to be given in evidence in prosecutions for libels, and jury to determine both law and fact.

SECTION 1. No authority can, on any pretence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

All authority derived from the people.

1 R. L., 47, § 1.

§ 2. No tax, duty, aid or imposition whatsoever, except such as may be laid by a law of the United States, can be taken or levied within this state, without the grant and assent of the people of this state, by their representatives in senate and assembly; and no citizen of this state can be by any means compelled to contribute to any gift, loan, tax, or other like charge, not laid or imposed by a law of the United States, or by the legislature of this state.

Taxes how levied.

1 R. L., 48, § 12.

§ 3. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed.

Right to keep arms.

2d amendt. cons. U. S.

§ 4. No citizen of this state can be constrained to arm himself, or to go out of this state, or to find soldiers or men of arms, either horsemen or footmen, without the grant and assent of the people of this state, by their representatives in senate and assembly, except in the cases specially provided for by the constitution of the United States.

Military service by citizens.

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1 R. L., 48, § 12.

§ 5. All such inhabitants of this state of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, are to be excused therefrom by paying to the state an equivalent in money; and the legislature is required to provide by law for the collection of such equivalent, to be estimated according to the expense, in time and money, of an ordinary able-bodied militia-man.

Who to be excused.

§ 6. No soldier can in time of peace be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Quartering soldiers.

1 R. L., 48, § 13; 3d amendt. to cons. U. S.

§ 7. No member of this state can be disfranchised, or deprived of any of the rights or privileges secured to any citizen

Rights secured.

CHAP 4

thereof, unless by the law of the land, or the judgment of his peers.

1 R. L., 47, § 2 and 5. Cons., art. 1, § 1.

Trial by
jury.
New courts.

§ 8. The trial by jury, in all cases in which it has heretofore been used, is to remain inviolate forever; and no new court can be instituted but such as shall proceed according to the course of the common law, except such courts of equity as the legislature, by the constitution of this state, is authorized to establish.

Cons., art. 1, § 2.

Religious
worship.

§ 9. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, is forever to be allowed in this state to all mankind; but the liberty of conscience so secured, is not to be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace or safety of this state.

Cons., art. 1, § 3.

Writ of
habeas cor-
pus.

§ 10. The privilege of the writ of *habeas corpus* cannot be suspended, unless when in cases of rebellion or invasion, the public safety may require its suspension.

Cons., art. 1, § 4.

Search
warrants.

§ 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, ought not to be violated; and no warrants can issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

4th amendt. const. U. S.

Accusa-
tions of
crimes.

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§ 12. No person can be held to answer for a capital or otherwise infamous crime, (except in cases of impeachment; and in cases of the militia when in actual service, and of the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace; and in cases of petit larceny, under the regulation of the legislature,) unless on presentment or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused is to be allowed counsel as in civil actions, or he may appear and defend in person.

Cons., art. 1, § 6.

Criminal
proceedings
Private
property.

§ 13. No person can be subject for the same offence, to be twice put in jeopardy of life or limb; nor can he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor can private property be taken for public use, without just compensation.

Cons., art. 1, § 6.

Rights of
accused
persons.

§ 14. In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation: to

be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor.

6th amendt. cons. U. S.

§ 15. Neither justice nor right should be sold to any person, nor denied, nor deferred; and writs and process ought to be granted freely and without delay, to all persons requiring the same, on payment of the fees established by law.

Justice to be speedy Process.

1 R. L., 48, § 6.

§ 16. No citizen of this state ought to be fined or amerced without reasonable cause, and such fine or amercement should always be proportioned to the nature of the offence.

Fines.

1 R. L., 48, § 7.

§ 17. Excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

Bail, &c.

1 R. L., 48, § 8; 8th amendt. to cons. U. S. Cons., art. § 5.

§ 18. All elections ought to be free; and no person by force of arms, malice, menacing, or otherwise, should presume to disturb or hinder any citizen of this state in the free exercise of the right of suffrage.

Elections.

1 R. L., 48, § 9.

§ 19. It is the right of the citizens of this state to petition the governor, or either house of the legislature; and all commitments and prosecutions for such petitioning are illegal.

Right to petition.

1 R. L., 48, § 10. Cons., art. 1, § 10.

§ 20. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law can be passed to restrain or abridge the liberty of speech or of the press.

Liberty of speech, &c.

6 B., 58. Cons., art. 1, § 8.

§ 21. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party is to be acquitted; and the jury have the right to determine the law and the fact.

Prosecutions for libels.

Cons., art. 1, § 8.

CHAP. V.

[95]

Of the Public Officers of this State, other than Militia and Town Officers; their election or appointment; their qualifications, and the tenure of their offices.

(Took effect 1 January, 1890.)

TITLE 1.—Of the number, location, and classification of the public officers of the state.

TITLE 2.—Of legislative officers.

TITLE 3.—Of executive officers.

TITLE 1.

TITLE 4.—Of judicial officers.

TITLE 5.—Of administrative officers.

TITLE 6.—General provisions applicable to all the civil officers of this state, or to certain classes of them.

TITLE I.

OF THE NUMBER, LOCATION, AND CLASSIFICATION OF THE
PUBLIC OFFICERS OF THE STATE.

SEC. 1. Names and number of the several civil officers.

2. Common councils to fix the number of commissioners of deeds and notaries.

3. Copy of such determination to be transmitted to governor.

4. Nominations to be made conformably to such determination.

5. County courts to determine number of commissioners of deeds in towns.

6. Such commissioners, when not to be increased.

7. What offices to be vacated under this chapter.

8. In certain cases no new appointment to be made.

9. Circuit judges, &c., where to reside.

10. County judges and recorders where to reside.

11. Surrogates, &c., local officers.

12. Justices of the peace where to reside, &c.

13. Commissioners of deeds where to reside, &c.

14. Notaries public where to reside, &c.

15. Sheriffs, &c., where to reside.

16. Administrative officers confined in the execution of their duties.

Classification
of the
civil offi-
cers.

SECTION 1. There shall be elected or appointed, in the manner herein after declared or prescribed, the following civil officers, who shall be arranged in classes to be denominated legislative, executive, judicial and administrative; but this classification shall not be construed as defining the legal powers of the officers, that shall be assigned to either class:

1. *In the class of Legislative Officers,*

Legislative.

Thirty-two senators;

One hundred and twenty-eight members of the assembly;

A speaker of the house of assembly from its own body;

A clerk, a sergeant-at-arms, a door-keeper, and so many assistant door-keepers, messengers, and other subordinate officers for each house of the legislature, as such houses shall respectively deem necessary.

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2. *In the class of Executive Officers.*

Executive.

A governor and lieutenant-governor;

A secretary of state, a comptroller, a treasury, an attorney general, a surveyor-general, and a state printer;

A private secretary for the governor, and a door-keeper of the executive chamber.

3. *In the class of Judicial Officers,*

Judicial.

Chancery.

A chancellor, a register of the court of chancery, to reside and keep his office in the city of Albany, an assistant register of the same court, to reside and keep his office in the city of New York;

A clerk of the said court, to reside and keep his office in the village of Poughkeepsie, and a clerk thereof, to reside and keep his office in the village of Utica;

A sergeant of said court, to reside in the city of Albany, and a sergeant thereof, to reside in the city of New York;

Five masters and two examiners in chancery in the city and county of New York, and not more than three masters and three examiners in every other county of this state;

So many commissioners to take affidavits to be read in the said court, as the chancellor shall from time to time think proper to appoint;

A chief justice and two justices of the supreme court; three clerks of the said court, one to reside and keep his office in the city of Albany, one in the city of New York, and one in the village of Utica; and three criers of the said court, one to reside in Albany, one in New York, and one in the county of Oneida;

A commissioner to perform the duties of a justice of the supreme court at chambers, to be denominated "Supreme Court Commissioner," to reside in each of the following counties and places: In the counties of Allegany, Cattaraugus, Chautauque, Erie, Franklin, Genesee, Herkimer,¹ Lewis,² Madison,³ Niagara, Oneida, Ontario, Orange, St. Lawrence, Suffolk,⁴ Sullivan, Tompkins, Ulster and Westchester;⁵ one to reside either in the county of Tioga or in the county of Steuben; in the town of Plattsburgh, in the county of Clinton; in the village of Catskill, in the county of Greene;⁶ in the village of Poughkeepsie, in the county of Dutchess; in the village of Watertown, in the county of Jefferson; in the village of Canajoharie, in the county of Montgomery;⁷ in the village of Glen's Falls, in the county of Warren;⁸ in the town of Kingsbury, in the county of Washington; and in the town of Whitehall, in the county of Washington;

¹ Laws of 1828, chap. 237, April 17, 1828. ² Laws of 1828, chap. 2, January 7, 1828. ³ Laws of 1828, chap. 133, March 28, 1828.

⁴ Laws of 1828, chap. 244, April 18, 1828.

So many commissioners to take affidavits to be read in the supreme court, as the justices thereof shall think proper to appoint;

A clerk of the court for the trial of impeachments and the correction of errors, a crier, and a sergeant of the same court;

A reporter of the decisions of the supreme court, and of the decisions of the court for the trial of impeachments and the correction of errors, to be denominated the "state reporter;"

A reporter of the decisions of the court of chancery, to be denominated the "chancery reporter;"

A circuit judge for each of the eight circuits, and a clerk of the court of equity of each circuit;

A first judge and four judges of the county courts of each county, except the city and county of New-York, in which there shall be a first judge of the court of common pleas;

Laws of 1828, chap. 321, April 21, 1828.

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Court of
errors.

Reporters.

Circuit,
courts.

County
courts.

TITLE 1.

A chief justice and two associate judges of the superior court of law in and for the city and county of New-York;

Laws of 1828, chap. 321, April 21, 1828.

Clerks, &c. A clerk, a sheriff, a surrogate, and a district attorney for each county;

Coroners. A coroner for the city and county of New-York, and four coroners for every other county;

New York. A register of the city and county of New-York, and a clerk of the court of oyer and terminer and general sessions of the same city;

Recorders. A recorder of each of the cities of Albany, New-York, Hudson and Troy;

Clerks of cities. A clerk of the city of Hudson, and a marshal for each of the cities of Hudson and Troy;

Special justices. Three special justices for the city of New-York, and a clerk of the police office in said city;

Three justices of the marine court for the city of New-York, and a clerk of said court;

An assistant justice for the first, second and third wards; an assistant justice for the fourth and sixth wards; an assistant justice for the fifth, eighth and fourteenth wards; an assistant justice for the seventh, tenth and thirteenth wards; an assistant justice for the ninth and eleventh wards, and a clerk to each of the said assistant justices, and two assistant justices for the twelfth ward of the city of New-York;

Three justices of the justices' court of the city of Albany, and a clerk of said court;

A justice of the peace for the fifth ward of the city of Albany;

Laws of 1828, chap. 178, April 5, 1828.

Three justices of the justices' court of the city of Hudson, and a clerk of said court;

Not less than three, nor more than six justices of the peace for the city of Schenectady;

Justices. Four justices of the peace for each town in the state;

Commissioners of deeds. Not less than two, nor more than four commissioners to take the proofs and acknowledgments of deeds, and to perform certain other duties, to be denominated "commissioners of deeds," for each town in the state, and so many of the like commissioners for each of the cities in this state, as shall from time to time be determined in the manner herein after provided;

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Commissioners of deeds for the city and county of New-York;

Laws of 1829, chap. 52.

Notaries public.

Notaries public in the city and county of New-York.

Laws of 1829, chap. 52.

So many notaries public in each of the other cities of this state, as shall from time to time be determined, in the manner herein after provided;

TITLE I.

So many notaries public in each of the counties of this state, except the city and county of New-York, as the governor and senate shall think proper to appoint;

And so many counsellors, solicitors and attornies, as shall from time to time, be licensed to practice by the several courts of law or equity in this state.

Counselors, &c.

4. In the class of Administrative Officers,

Four canal commissioners, two of whom shall be acting commissioners;

Administrative.

Two canal appraisers, and so many superintendents of canal repairs as the canal board shall from time to time appoint;

Canal officers.

A mayor of each of the cities in this state;

Mayors, &c.

A president of the village of Utica;

A county treasurer for each county, except the city and county of New-York;

County treasurers.

Loan-officers under the act of the fourteenth of April, one thousand seven hundred and ninety-two, entitled "An act for loaning monies belonging to this state," for each county in which vacancies shall occur in the office of any such officer;

Loan officers.

Commissioners of loans under the act of the eleventh of April, one thousand eight hundred and eight, entitled "An act authorising a loan of monies to the citizens of this state," for each county in which vacancies shall occur in the office of any such officer;

Loan-officers for the county of Putnam, whenever vacancies shall occur in the office of any such officer;

Five inspectors of the state prison at Auburn;

Prison inspectors.

A superintendent of the Onondaga salt springs, and an inspector of salt in the county of Onondaga;

Salt springs

A superintendent of the salt springs at Montezuma;

Three harbour-masters of the port of New-York, and so many wardens and branch pilots for the same port, as the governor and senate shall think proper to appoint;

Harbor masters, &c.

Not more than fifty-four auctioneers for the city and county of New-York, four for the city and county of Albany, and one or more for every other city, village or county, where they shall be deemed necessary by the appointing power;

Auctioneers.

An inspector of flour and meal for each of the cities of Albany and New York, and one or more such inspectors in every other city or county, where they shall be deemed necessary by the appointing power;

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Inspectors of flour.

An inspector of beef in the city of New York, to inspect and put up beef, killed according to the rites of the people called Jews;

Inspectors of beef, &c.

Not more than ten inspectors of beef and pork for the city and county of New York, and one or more such inspectors in every other county where they shall be deemed necessary, by the appointing power;

One inspector of pot and pearl ashes for the city and county of New-York, and not more than two such inspectors

Inspectors of ashes.

TITLE I.

in every other county where they shall be deemed necessary by the appointing power ;

Inspectors
of lumber.

Not less than seven, nor more than ten inspectors of lumber for the city and county of New-York ; not less than two, nor more than four for the city of Albany ; one for the city of Hudson ; and so many in other parts of the state, as may be deemed necessary by the appointing power ;

Inspectors
of staves
and heading

An inspector-general of staves and heading for the city and county of Albany, and one for the city and county of New-York ;

Cullers of
do.

Not less than eight, nor more than ten cullers of staves and heading, for the city and county of New-York ; not less than four, nor more than six, for the city and county of Albany ; two or more for the city of Hudson, and so many in the other counties as shall be deemed necessary by the appointing power ;

Inspectors
of sole-
leather.

Five inspectors of sole-leather for the city and county of New York ; two for the city and county of Albany ; two for the city of Troy ; one for each of the cities of Hudson and Schenectady ; one for the village of Brooklyn, in the county of Kings ; one for the village of Catskill, in the county of Greene ; one for the port of Sagg-Harbour, in the county of Suffolk ; one for the village of Lansingburgh, in the county of Rensselaer ; one for the village of Waterford, in the county of Saratoga ; one for the village of Utica, in the county of Oneida ; one for the village of Ithaca, in the county of Tompkins ; one for the village of Auburn, in the county of Cayuga ; one for the village of Rochester, in the county of Monroe ; one for the village of Newburgh, in the county of Orange ; one for the village of Batavia, in the county of Genesee ; one for the county of Lewis ; one for the county of Onondaga ; one for the county of Herkimer ; one for the county of Montgomery ; one for the county of Madison ; one for the county of Ulster ; one for the county of Oneida ; one for the county of Jefferson ; two for the county of Ontario, one of whom shall reside in the village of Geneva ; and so many such inspectors for the several other counties or villages in this state, as shall be deemed necessary by the appointing power ;

Inspector
of flaxseed.

An inspector of flaxseed for the city and county of New-York ;

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Inspectors
of tobacco.

An inspector of leaf tobacco for the city and county of New-York ;

Laws of 1828, chap. 274, April 19, 1828.

Inspectors
of fish.

Four inspectors of fish for the city of New York ; one for the county of Jefferson ; one for each of the towns of Richland, and Orwell, in the county of Oswego ; and one or more in the other counties of the state, as may be deemed necessary by the appointing power ;

Inspectors
of oil.

An inspector of fish or liver oil, for each of the cities of New-York, Albany and Troy ;

An inspector of distilled spirits, for the city of New-York; and one for each other county of the state, where such an appointment shall be deemed necessary by the appointing power;

TITLE 1.
Inspectors
o. spirits.

An inspector of hops for each of the cities of New-York, Albany and Troy; and for each of the villages of Utica, Oswego, Buffalo, Ithaca and Whitehall;

Inspectors
of hops.

One weigher at the quarantine ground, on Staten Island;

Weigher

A health officer, a resident physician, and a health commissioner, for the city and county of New-York;

Health offi-
cers.

A health officer for the city of Albany, and one for the city of Hudson;

So many directors of incorporated banks as the state may be authorized, by the acts of incorporation, to appoint;

Bank direc-
tors.

Fifteen wreck-masters, in the county of Suffolk; twelve in the county of Queens; three in the county of Kings; two in the county of Richmond, and two in the county of Westchester;

Wreck mas-
ters.

A county sealer for each county; and the sealers for the counties of Albany and Oneida, shall be deemed assistant state sealers;

County
sealers.

Not less than three, nor more than five commissioners to inspect turnpike roads, in each county in this state, in which there shall be a turnpike road whose act of incorporation contains no provision for the appointment of special inspectors of such road;

Inspectors
of turn-
pikes.

An agent for the Onondaga tribe of Indians, five or more superintendents; and not less than three, nor more than five superintendents of the Brothertown Indians;

Indian offi-
cers.

An attorney for the Oneida Indians;

And a receiver of the profits of the state pier at Sagg-Harbour.

Receiver at
Sagg-Har-
bour.

Compiled from the constitution of 1821, and from the statutes in force in September, 1827, except where otherwise specially noted; 24 W., 409.

§ 2. The common council of each of the cities in this state, except the city of New-York, on or before the first day of January in the year one thousand eight hundred and thirty, and once at the end of every two years thereafter, shall, by resolution of the board, determine and limit the number of commissioners of deeds and notaries public to be next appointed in and for their respective cities.

Commis-
sioners of
deeds and
notaries in
certain
cities how
limited.

§ 3. A copy of each determination to be made by the common council of any city, under the corporate seal, and attested by the mayor of the city, shall be transmitted to the governor within twenty days after the same shall have been made.

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It.

§ 4. No nomination or appointment shall be made by the governor to any of the offices so limited, as stated in the preceding sections, unless in conformity to the limitation.

It.

§ 5. The judges of the county court in each county, shall, at each county court, next preceding the annual meeting of

Commis-
sioners of

TITLE 1.
deeds in
towns.

the judges and supervisors for the purpose of appointing commissioners of deeds, determine by rule of court the number of commissioners of deeds in each town of the county, for the year next ensuing such annual meeting.

Id.

§ 6. At such annual meeting, no increase shall be made in the number of such commissioners in any town, unless in conformity to such previous determination of the judges.

**Offices
when va-
cated.**

§ 7. No limitation contained in this chapter, or to be made in the mode herein prescribed, of the number of persons to be appointed to any office, shall be construed to vacate the office of any persons now being, or who shall then be in office; except commissioners of deeds and notaries public in cities, whose offices shall be vacated on the first day of January, one thousand eight hundred and thirty.

**When no
new ap-
pointment
to be made.**

§ 8. If, at the expiration of the term of office of any one or more persons holding any of the offices so limited or to be limited, the number of persons holding the same office shall exceed the limitation then in force, no nomination or appointment of any one or more persons shall be made to such office for the district, county or place to which the limitation applies, until the number of persons holding the same shall be so reduced, as not to exceed the limitation then in force.

**Circuit
judges, &c.,
how far
local off-
icers.**

§ 9. The offices of circuit judge, supreme court commissioner, and of master and examiner in chancery, shall so far be deemed local, as to require the residence of each judge, master and examiner, within the circuit, district, county or place, for which he shall be appointed.

**County
Judges and
recorders.**

§ 10. Judges of county courts, and recorders of cities, must reside within the county or city for which they shall be respectively appointed.

**Surrogates,
&c.**

§ 11. Surrogates, supreme court commissioners, commissioners of deeds, and justices in cities, are local officers; and each officer shall be confined, in the execution of his duties, to the district or county for which he shall be appointed.

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Justices.**

§ 12. Justices of the peace must reside in the town for which they were chosen; and shall not try a civil cause in any other town, except in cases otherwise provided for by law.

21 W., 563; 9 W., 322.

**Commis-
sioners of
deeds.**

§ 13. Commissioners of deeds must reside within the respective towns for which they shall be chosen or appointed, but may execute the duties of their office at any place within the county.

Notaries.

§ 14. Notaries public must reside in the respective cities or counties for which they shall be appointed, but may execute the duties of their office at any place within the state.

**Sheriffs,
&c.**

§ 15. The following officers, namely: sheriffs, clerks of counties, coroners, district attorneys, marshals of cities, the clerk of the court of oyer and terminer and general sessions in New York, the register and clerk of that city, police justices and assistant justices in that city, and their clerks,

are so far local, as to require the residence of every person holding such office, within the county or city, in which the duties of his office are required by law to be executed.

§ 16. Every officer included in the class of administrative officers, shall be confined in the execution of his duties, to the district, county, city, town, or village for which he shall be appointed, except where otherwise provided for by law.

Administrative officers.

TITLE II.

OF LEGISLATIVE OFFICERS.

SMC. 1. Senators and members of assembly for what term chosen.

2. How chosen.

3. Qualifications of senators: proceedings to ascertain their terms of service.

4. Members of the legislature ineligible to certain civil appointments.

5. Persons holding offices under United States, ineligible to seat in legislature.

6. (Repealed.)

7. Members of legislature not to be appointed to certain offices by the governor.

8. When senate to choose a temporary president.

9. When president of the senate to act as governor.

§ 1. Senators and members of assembly are chosen by the people; senators for four years, members of assembly annually.

Senators, &c., term of office.

§ 2. Senators are chosen by districts; members of assembly by counties. One senator must be chosen annually in each senate district, and at least one member of the assembly in each county of the state, separately organized.

How chosen

§ 3. Senators must be freeholders; and whenever two or more senators shall be chosen at any election, one or more of whom shall be chosen to supply a vacancy, and one for the regular term, it shall be determined by lot, in such manner as the senate shall direct, which of them shall be considered as elected for the longest term, without regarding any designation upon the ballots given for the persons so chosen.

Qualifications of senators, &c.

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§ 4. No member of the legislature can receive any civil appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected.

Ineligible to certain offices.

§ 5. No person, being a member of congress, or holding any judicial or military office under the United States, can hold a seat in the legislature. If any person shall, while a member of the legislature, be elected to congress, or be appointed to any office civil or military under the government of the United States, his acceptance thereof shall vacate his seat in the legislature.

United States officers.

Section 6 repealed by Laws of 1851, ch. 34.

§ 7. No person elected to either branch of the legislature, shall be appointed by the governor to any office, during the term for which such person shall have been elected; but this prohibition shall not extend to those officers whose appointment is, by the constitution, vested in the governor.

Further ineligibility to office.

Laws of 1823, p. 244.

TITLE 2.
Temporary
president of
the senate
when to be
chosen.

When to act
as governor.

§ 8. Whenever the lieutenant-governor shall act as governor, or shall not attend the senate, that house shall choose a temporary president from its own body, to serve until the lieutenant-governor shall return to preside therein.

§ 9. If during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate, so chosen, shall act as governor, until the vacancy shall be filled, or the disability shall cease; and the senate shall choose from its own body, another person to preside therein.

TITLE III.

OF EXECUTIVE OFFICERS.

- SEC.** 1. Governor and lieutenant-governor, when to be chosen.
2. When candidates receive an equal number of votes for governor.
3. The like as to candidates for lieutenant-governor.
4. Qualifications required for governor.
5, 6. Certain state officers, how and when appointed.
7. Tenure of their offices.
8. Treasurer, how and when appointed.
9. Nominations of state officers, when to be made.
10. Proceedings thereupon in case the nominations agree.
11. Proceedings in case they disagree.
12. State printer, how appointed, and tenure of his office.
13. Private secretary and door-keeper of executive chamber, how appointed.

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Governor
and lieu-
tenant-gov-
ernor.

§ 1. A governor and lieutenant-governor shall be chosen at each biennial general election, from and after the general election in November, one thousand eight hundred and twenty-two.

Equality of
votes for
governor.

§ 2. In case two or more persons receive an equal and the highest number of votes for governor, at any election, it shall be the duty of the board of state canvassers to lay before the legislature, on the first day of its next session after such election, a certified statement of the votes canvassed by them; and the two houses shall immediately proceed to choose, by joint ballot, one of those persons having such equal number of votes, to be governor.

The like for
lieutenant-
governor.

§ 3. In case two or more persons shall receive an equal and the highest number of votes for lieutenant-governor, a statement of the canvass of such votes shall in like manner be laid before the legislature; and the two houses shall proceed in the same manner to choose by joint ballot, one of those persons having such equal number of votes, to be lieutenant-governor.

Qualifica-
tions of
governor.

§ 4. No person is eligible to the office of governor, unless he shall be,

1. A native citizen of the United States;
2. A freeholder;
3. Thirty years of age;
4. And shall have been five years a resident within this

state, unless he shall have been absent during that time, on public business of the United States or of this state.

§ 5. The secretary of state, the comptroller, the attorney-general, and the surveyor-general, are appointed by the legislature, as follows: The senate and assembly each openly nominate one person for each of those offices respectively, or for such of them as are then to be filled; after which, they meet together; if the nominations are found to agree, the person nominated is declared to be appointed; if the nominations do not agree, the appointment is then made by the joint ballot of the senators and members of assembly.

State officers, how appointed.

§ 6. Such appointment shall be made once in every three years, from and after the first Monday of February, in the year one thousand eight hundred and twenty-three; or as often as vacancies shall occur.

And when.

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§ 7. The persons so appointed, hold their offices for three years, unless sooner removed by a concurrent resolution of the senate and assembly.

Tenure of their offices.

§ 8. The treasurer is appointed by the legislature in the same manner, and such appointment is made annually.

Treasurer.

§ 9. The senate and assembly shall proceed to nominate each of the several state officers above named, on the first Monday of February in each year, during which his term of office shall expire. If an appointment shall be necessary to supply an existing vacancy, they shall fix, by concurrent resolution, the day on which they will proceed to nominate for such appointment.

Nominations of state officers.

§ 10. If, on the comparison of such nominations they be found to agree, the president of the senate shall declare such agreement, and that the persons so nominated are chosen. Copies of the resolutions of the two houses by which such nominations were made, shall be certified by the respective presiding officers thereof, and attested by their clerks; which shall be delivered to the person appointed, and shall be evidence of his appointment.

Proceedings in case they agree.

§ 11. If the nominations disagree, and the officer be chosen by a joint ballot, the result of such ballot shall be certified by the presiding officers of the two houses, and attested by the clerks thereof; which certificate shall be delivered to the person so chosen, and shall be evidence of his appointment.

In case they disagree.

§ 12. The state printer shall be appointed by law, and shall hold his office during the pleasure of the legislature.

State printer.

§ 13. The private secretary of the governor, and the door-keeper of the executive chamber, shall be appointed by the governor, and hold their respective offices during his pleasure.

Governor's private secretary, &c.

TITLE 4.

TITLE IV.

OF JUDICIAL OFFICERS.

ART. 1. — Of judicial officers appointed by the governor and senate.

ART. 2. — Of judicial officers appointed by courts of justice.

ART. 3. — Of judicial officers appointed by the local authorities of a county or city.

ART. 4. — Of judicial officers elected by the people.

ARTICLE FIRST.

OF JUDICIAL OFFICERS APPOINTED BY THE GOVERNOR AND SENATE.

SEC. 1. Chancellor, judges, &c., how appointed.

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2. Tenure of offices of chancellor, justices of the supreme court and circuit judges.

3. Chancellor, justices of the supreme court, and circuit judges can hold no other office.

4. Judges of county courts, &c., hold for five years, subject to removal.

5. If office of first judge be vacant, governor to designate a successor.

6. Tenure of office of masters and examiners in chancery.

7. Masters in chancery required to be counsellors or solicitors.

8. Masters and examiners prohibited from acting in certain cases.

9. Surrogates, &c., how appointed.

10. Tenure of their offices.

11. Supreme court commissioners required to be counsellors at law.

12. Marshals of Hudson and Troy how appointed.

Chancellor,
&c., how
appointed.

§ 1. The chancellor, the justices of the supreme court, and the circuit judges, the judges of county courts, the recorders of cities, and masters and examiners in chancery, are nominated by the governor, and appointed by him, with the consent of the senate. The chief justice and associate judges of the superior court of law, in and for the city and county of New-York, shall be nominated and appointed in the same manner.

Laws of 1828, chap. 137, § 2; *Ib.*, chap. 321, § 1.

Tenure of
certain offi-
ces. 7

§ 2. The chancellor, the justices of the supreme court and the circuit judges, hold their offices during good behaviour, or until they respectively attain the age of sixty years; but may be removed by a joint resolution of the two houses of the legislature, if such resolution be concurred in by two-thirds of all the members elected to the assembly, and a majority of all the members elected to the senate.

Can hold no
other office.

§ 3. Neither the chancellor, nor a justice of the supreme court, nor a circuit judge, can hold any other office or public trust; and all votes given to either of them, for any elective office, either by the legislature or the people, during his continuance in his judicial office, are void.

Judges of
county
courts, &c.

§ 4. Judges of county courts, recorders of cities, the first judge of the court of common pleas in the city and county of New-York, the chief justice and associate judges of the superior court of law in and for the said city and county, hold their offices for five years; but may be removed by the senate, on the recommendation of the governor, for causes to be stated in such recommendation.

Laws of 1828, chap. 321.

§ 5. If the office of first judge in any county shall become vacant, the governor, in his nomination to the senate, of a person to supply such vacancy, shall designate him as first judge of such county.

ART. 2
Vacancy in
office of first
judge.

§ 6. Masters and examiners in chancery hold their offices for three years; but may be sooner removed by the senate, on the recommendation of the governor.

Masters and
examiners
in chancery.

§ 7. No person shall be appointed a master in chancery, who shall not be, at the time of such appointment, of the degree of counsellor of the supreme court, or of solicitor or counsellor in the court of chancery.

Qualifica-
tion of mas-
ters in
chancery.

§ 8. No master or examiner in chancery shall act as such, either in the court of chancery, or in any of the equity courts of this state, in any cause or matter in which he shall be solicitor or counsel, or which shall be prosecuted, defended, or in any manner managed or directed, by any solicitor or counsellor, with whom such master or examiner shall be directly or indirectly connected in business.

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Masters and
examiners
not to act in
certain
cases.

Laws of 1824, p. 28, § 2.

§ 9. Surrogates; supreme court commissioners; commissioners of deeds within the city and county of New-York, and in the several cities of this state; notaries public; justices of the marine court in the city of New-York; justices of the justices' court in the cities of Albany and Hudson, and all other justices in cities, except those of whom the constitution directs the mode of appointment, shall be nominated by the governor, and appointed by him, with the consent of the senate.

Surrogates,
&c., how
appointed.

Laws of 1823, p. 62, § 7 & 8; Ib., p. 243, § 1.

§ 10. The justices of the marine court in the city of New-York, shall hold their offices for five years; all the justices mentioned in the preceding section, and surrogates, shall hold their offices for four years; the other officers named in the preceding section, shall hold their offices for two years.

Tenure of
their offices

Laws of 1823, p. 62, § 7 & 8; Ib., p. 243, § 1.

§ 11. No person shall be appointed a supreme court commissioner, unless he be at the time a counsellor at law of the supreme court.

Supreme
court com-
missioner.

§ 12. The marshal of the city of Hudson, and the marshal of the city of Troy, shall be appointed by the governor, with the consent of the senate, and shall hold their offices respectively for three years.

Marshals of
Hudson and
Troy.

Laws of 1824, p. 315, § 1, as to Troy.

ARTICLE SECOND.

OF JUDICIAL OFFICERS APPOINTED BY COURTS OF JUSTICE.

Sec. 13. Clerk of oyer and terminer in New-York, how appointed and tenure of his office.

14. Other clerks of courts how appointed.

15. District attorneys how appointed. Must be counsellors.

TITLE 4.

SEC. 16. Tenure of office of clerks and district attorneys.

17. Registers in chancery how appointed; tenure of their offices.

18. Reporters how appointed; tenure of their offices.

19. Must be counsellors of five years' standing.

20. Counsellors, solicitors and attorneys how appointed.

21. Supreme court and chancellor to prescribe rules as to counsellors, &c.

22. Solicitors and counsellors in chancery, may practise in all the courts of equity.

23. Counsellors, &c., may be removed or suspended; tenure of their offices.

24. Causes of removal.

25. Effect of removal.

26. Clerks and registers prohibited from practising as counsellors, &c.

27. Sheriffs and coroners also prohibited.

28. Other officers of courts how appointed.

Clerk of
oyer and
terminer in
New-York.
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§ 13. The clerk of the court of oyer and terminer and general sessions of the peace in the city and county of New-York, is appointed by, and holds his office during the pleasure of, the court of general sessions of the peace in that city.

Other
clerks of
courts.

§ 14. Clerks of courts, except those whose appointment is otherwise provided for, are appointed by the courts of which they respectively are clerks. The clerk of the mayor's court of the city of Hudson, shall, by virtue of his office, be clerk of said city.

District
attornies,
how ap-
pointed.

§ 15. District attornies are appointed by the judges of the county courts of the respective counties. No person shall be appointed a district attorney, unless he be at the time a counsellor at law of the supreme court; but if there be no such counsellor residing in the county, or none willing to accept the office, an attorney at law may be appointed.

Laws of 1818, p. 306, § 4; 1824, p. 314, § 2.

Clerks and
district at-
tornies,
tenure of
their offices
Registers
in chancery.

§ 16. Such clerks appointed by courts, and district attornies, hold their offices for three years, but may be sooner removed by the court appointing them.

§ 17. The register and assistant-register in chancery, are appointed by the chancellor, and hold their offices during his pleasure.

Reporters.

§ 18. The state reporter shall be appointed by the lieutenant-governor, the chancellor and chief justice, and hold his office during their pleasure. The reporter in chancery shall be appointed by, and hold his office during the pleasure of, the chancellor.

Laws of 1823, p. 208, § 3; 1825, p. 385.

Ib.

§ 19. No person shall be appointed a reporter, who shall not be, at the time of his appointment, a counsellor at law or in chancery, of at least five years' standing.

Counsel-
lors, &c.

§ 20. Counsellors, solicitors and attornies, shall be appointed and licensed to practise by the several courts of law and equity in which they intend to practise. Their licenses shall be signed by the chancellor, chief justice or presiding judge of the courts by which they shall respectively be appointed.

Laws of 1823, p. 215, § 19.

§ 21. The supreme court shall prescribe the rules and regulations under which counsellors and attornies shall be appointed and licensed in that court, and the chancellor, those under which counsellors and solicitors shall be so appointed and licensed in the court of chancery, and the several courts of equity.

ART. 2.
Counsel-
lors, &c.

Laws of 1823, p. 215, § 19.

§ 22. All solicitors and counsellors, licensed in the court of chancery, shall be authorized to practise as such in all the courts of equity.

Id., their
authority.

Laws of 1823, p. 215, § 19.

§ 23. Counsellors, solicitors and attornies may be removed or suspended by the several courts in which they shall be appointed; but subject to such removal and suspension, they hold their offices during life.

Id., tenure
of office.

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1 R. L., 417, § 5.

§ 24. Any counsellor, solicitor or attorney, may be removed or suspended, who shall be guilty of any deceit, mal-practice or misdemeanor, but not until a copy of the charges against him, shall have been delivered to him, by the clerk of the court in which the proceedings shall be had, and an opportunity shall have been given to him, of being heard in his defence.

Counsel-
lors, &c.,
their re-
moval.

1 R. L., 417, § 5.

§ 25. The removal or suspension of any counsellor, solicitor, or attorney, by the chancellor or the supreme court, from their respective courts, shall operate as a removal or suspension in every court in the state; but in every other case, the removal or suspension shall be confined to the court in which it shall be declared.

Id.

§ 26. No clerk, deputy clerk, register, assistant-register, or deputy-register of any court, shall, during his continuance in office, practice in such court as a counsellor, solicitor or attorney.

Who may
not practice

1 R. L., 417, § 10.

§ 27. No sheriff, under-sheriff, deputy-sheriff, sheriff's clerk, or coroner, shall, during his continuance in office, practice as a counsellor, solicitor or attorney, in any court of law or equity.

Id.

1 R. L., 417, § 10.

§ 28. All officers of courts, other than those above mentioned, shall be appointed by the courts of which they shall respectively be officers, and shall hold their offices during the pleasure of the court so appointing them.

Other off-
icers of
courts, how
appointed.

5 N. Y., 66.

ARTICLE THIRD.

OF JUDICIAL OFFICERS APPOINTED BY THE LOCAL AUTHORITIES OF A COUNTY OR CITY.

SEC. 29. Commissioners of deeds in towns how to be appointed.

30. Supervisor ineligible.

31. Tenure of the office; how removed.

TITLE 4.

SEC. 32. Causes of removal to be assigned.

33. Notice thereof to be given.

34. Special and assistant justices in New-York how appointed; and tenure of office.

Commissioners of deeds, how appointed.

§ 29. Commissioners of deeds in each town of the state shall be appointed in the manner following:

1. The judges of the county courts and the board of supervisors, in each county, shall meet in separate chambers on the day and at the place, of the annual meeting of the board of supervisors in their respective counties.

2. Each body, when so met, shall nominate in separate lists, the number of persons then to be appointed commissioners of deeds, in the several towns of the county.

3. They shall meet together, for the purpose of comparing their respective nominations, on the same day, or on the day following that on which such nominations shall have been made.

[110] 4. If they shall agree in whole or in part in such nominations, the persons on whom they so agree shall be appointed.

5. If the county judges and board of supervisors shall disagree in the nominations, or if either the county judges or the board of supervisors shall fail or refuse to nominate, they shall immediately proceed to elect by joint ballot so many persons as shall be necessary to complete the number of commissioners then to be appointed.

Laws of 1837, chap. 439.

6. They shall make out a certificate of appointment, containing the names of the persons appointed by them.

7. The certificate shall be signed by the first or senior judge, and by the chairman of the board of supervisors, and shall be filed in the office of the clerk of the county.

Laws of 1823, p. 244, § 4.

Who ineligible.

§ 30. No supervisor shall be appointed a commissioner of deeds.

Laws of 1823, p. 244, § 4.

Tenure of office.

§ 31. Commissioners of deeds in towns, shall hold their respective offices for four years, but may be removed by the judges of the county courts.

Laws of 1823, p. 244, § 4.

Removal from office.

§ 32. The causes of such removal shall be assigned by the judges in writing, and shall be filed in the office of the clerk of the county.

Laws of 1823, p. 244, § 4.

Id.

§ 33. No commissioner of deeds shall be removed, until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

Laws of 1823, p. 244, § 4.

Justices in New York.

§ 34. The special justices and the assistant justices, and their clerks, in the city of New-York, are appointed by the

common council of that city. They hold their offices for the term of four years, and are removable by the county court in the same manner as justices of the peace in the towns.

ARTICLE FOURTH.

OF JUDICIAL OFFICERS ELECTED BY THE PEOPLE.

- SEC. 35. Four justices to be elected in each town; tenure of their offices.
 36. Not to be removed unless notice shall have been given, &c.
 37. When a new town is erected, how justices to be elected.
 38. Justices residing in such new town to be deemed justices thereof.
 39, 40. Classes to be determined by drawing.
 41. How to be determined in case less than four be elected.
 42. If any justice neglects to attend, supervisor to draw for him. If supervisor be absent, &c., town clerk to act for him.
 43. Certificates of drawing and of result, to be recorded.
 44. If by erecting or altering a town there be more than four justices therein, all to act.
 45. If a town be deprived of one or more justices, their places to be supplied.
 46. When two or more justices are elected, proceedings to ascertain their terms.
 47. Sheriffs, clerks of counties, and register and clerk of New-York how chosen.
 48. Sheriffs can hold no other office, and can not be re-elected.
 49. Coroners when and how to be elected.
 50. Sheriffs, clerks and coroners in new counties, when to be chosen.

§ 35. There shall be four justices of the peace in each town, divided into four classes, one of whom shall be annually elected in the manner prescribed in chapter sixth of this act. Each justice hereafter chosen, shall hold his office for four years, except when elected to fill a vacancy, or on the erection of a new town as herein after prescribed; and may be removed by the judges of the county courts.

6 Cow., 645.

§ 36. No justice of the peace can be removed until he shall have notice of the charges made against him, nor until an opportunity be given him of being heard in his defence. The causes of such removal shall be assigned by the judges in writing, and be filed with the clerk of the court.

§ 37. Whenever a new town shall be erected, an election for justices therein shall be held at the next general election thereafter, unless a special election shall be directed by law.

§ 38. If there be one or more justices then residing in such new town, they shall be deemed justices thereof, and shall hold their offices according to their respective classes; and only so many justices shall be chosen as shall be necessary to complete the number of four for such town.

21 W., 563.

§ 39. After the election of justices in such new town, the supervisor thereof shall, within six days after the completion of the canvass by the county canvassers, give notice in writing, to the justices elected and to the town clerk, of the time and place where he will meet them, to determine by lot the classes of such justices; which notices shall be served at least six

ART. 4.

Justices in towns.

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Removal from office.

Justices in new towns.

Ib.

Ib., notice of meeting to determine classes.

TITLE 4.

Ib., classes,
how deter-
mined.

days, and not more than twelve, previous to the time appointed therein for such meeting.

§ 40. At the time and place so appointed, the supervisor and town clerk shall cause to be written on separate pieces of paper, as near alike as may be, the numbers one two, three, four, if there shall have been four justices elected, and shall cause them to be rolled up as nearly alike as may be, and deposited in a box. The persons elected justices shall severally draw one of the said pieces of paper, and shall be classed according to the number written on the paper so drawn by him, and shall hold his office for such number of years, either one, two, three, or four, as shall correspond with such number so drawn.

Ib.

§ 41. If less than four justices shall have been chosen, then ballots shall be prepared as above directed, with numbers written thereon, to correspond with the numbers of the classes which shall be vacant, and each person elected, shall, in like manner, proceed to draw one of the said ballots, and shall be classed according to the number so written on the ballot drawn by him, and shall hold his office according to such number.

Ib., neglect
to attend,
&c.

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§ 42. If any person elected a justice shall neglect to attend to such drawing, the supervisor shall draw for him. If the supervisor be absent from his town, or unable to serve, or his office be vacant, the town clerk shall give the notice herein required, and perform the duties enjoined on such supervisor.

Certificates
of drawing.

§ 43. Duplicate certificates of such drawing, and of the result thereof, shall be made, and certified by the supervisor and town clerk, or such one of them as shall attend the same, one of which shall be filed with the town clerk and the other with the county clerk, and shall be recorded by the said clerks in the books in which the canvasses of votes shall have been recorded: and shall be conclusive evidence of the respective classes, to which the persons so elected justices, belong.

When more
than four
justices
may hold
their offices

§ 44. If by the erection of a new town or the annexing of a part of one town to another, there should at any time be more than four justices residing in any town, they shall, notwithstanding, hold and exercise their offices in the town in which they reside, according to their classes respectively. But on the expiration of the term of office of two or more justices, being in the same class, only one person shall be elected to fill the vacancy in such class.

Proceed-
ings when
number re-
duced.

§ 45. Whenever, by the erection of a new town or the annexing of part of one town to another, any town shall be deprived of one or more justices, by their residence being within the part set off, the inhabitants of such town shall, at the next general election, supply the vacancy so produced in the classes to which such justices may belong: and if two or more justices be elected, the same proceedings shall be had, as before directed, to determine their respective classes.

Proceed-
ings when
elected for

§ 46. Whenever there shall be two or more justices chosen at any election, one or more of whom shall be chosen to

TITLE A.
unequal
terms.

supply a vacancy, and one for the regular term, the class to which each justice shall belong, and the term for which he shall serve, shall be determined by lot, in the presence of the supervisor and town clerk, within the time and in the manner herein before directed; the same notice shall be given, the same proceedings had, and the result certified with the like effect as before declared.

§ 47. Sheriffs and clerks of counties, and the register and clerk of the city and county of New-York, are chosen by the electors in the respective counties, once in every three years, and as often as vacancies occur.

Sheriffs,
&c.

§ 48. Sheriffs can hold no other office, and are ineligible to the same office, for the next three years, after the termination of their offices.

Disabili-
ties of
sheriffs.

§ 49. One coroner in the city and county of New-York, and four in every other county in the state, shall be elected in the same manner and at the same general election as sheriffs, hold their offices for the same term, and be removable in like manner.

Coroners.

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§ 50. The sheriffs, clerks and coroners first chosen in every county that may hereafter be erected, shall be elected at the general election next succeeding the erection of the county, or at such other time as the legislature shall direct.

Sheriffs
in new
counties.

TITLE V.

OF ADMINISTRATIVE OFFICERS.

Sec. 1 Who commissioners of land-office.

2. Who commissioners of the canal fund.

3. Canal commissioners how to be appointed; tenure of their offices.

4. Vacancies in the office of canal commissioner how to be supplied.

5. Canal board of whom to consist.

6. Superintendents of canal repairs how appointed and removed.

7. Collectors of canal tolls how appointed; tenure of their offices.

8. Comptroller may remove, and may make temporary appointments.

9. Canal appraisers how appointed. Not to act when interested.

10. Who trustees of state library.

11. Secretary of state to be superintendent of common schools and state sealer.

12. Mayors of cities how appointed.

13. County treasurers how appointed; tenure of their offices. Certain officers ineligible.

14. County sealers how appointed; tenure of their offices.

15. Commissioners of loans and various officers, to be appointed by governor and senate.

16. Tenure of their offices.

17. (Repealed.)

18. Vacancies in office of commissioners of health, may be supplied by board of health.

19. Loan-officers how appointed and tenure of their offices.

20. Inspectors of hops, &c., to be appointed by governor.

§ 1. The lieutenant-governor, the speaker of the assembly, the secretary of state, the attorney-general, the surveyor-general, the comptroller, and the treasurer, are by right of

Commis-
sioners of
land office.

TITLE 5.

office, and shall continue to be, commissioners of the land-office.

1 R. L., 292, § 1; Laws of 1816, p. 10, § 5.

Commissioners of canal fund.

§ 2. All the officers mentioned in the preceding section, except the speaker of the assembly, by right of office, are, and shall continue to be, commissioners of the canal fund; but they cannot act as a board unless the comptroller shall be present.

Laws of 1817, p. 301, § 1.

Canal commissioners.

§ 3. The canal commissioners shall be appointed by the legislature, who, in making such appointment, shall proceed in the same manner as in the appointment of secretary of state and other state officers. The tenure of their office is during the pleasure of the legislature.

Laws of 1816, p. 295, § 1; 1817, p. 202, § 2.

Id.

§ 4. If a vacancy shall occur in the office of canal commissioner, during a recess of the legislature, it shall be supplied by the appointment of the governor; but the powers of the officer appointed shall cease at the next meeting of the legislature.

Laws of 1817, p. 302, § 2.

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Canal board

§ 5. The canal board shall consist of the canal commissioners, and the commissioners of the canal fund.

Laws of 1826, p. 360, § 4; 26 W., 640.

Superintendents of canal repairs.

§ 6. Superintendents of canal repairs shall be appointed by the canal board. Either of the acting canal commissioners may remove any of the said superintendents, and fill the vacancy occasioned by such removal, by an appointment to continue until the next meeting of the canal board.

Laws of 1826, p. 360, §§ 1 & 3; 1827, p. 223, § 13.

Collectors of canal tolls.

§ 7. Collectors of canal tolls shall be appointed by the canal board, and shall hold their offices for one year, but may be removed at any time by such board.

Laws of 1826, p. 360, §§ 5 & 6.

Id.

§ 8. The comptroller shall also have power to remove any of the said collectors, at his pleasure, and to fill the vacancy occasioned by such removal, until the next meeting of the canal board.

Laws of 1826, p. 360, § 17.

Canal appraisers.

§ 9. The canal appraisers shall be nominated by the governor, and appointed by him, with the consent of the senate. No person shall act as appraiser in any case in which he shall be either directly or indirectly interested.

Laws of 1826, p. 398, § 1.

Trustees of state library.

§ 10. The governor, lieutenant-governor, the secretary of state, the attorney-general, and the comptroller, by right of office, are, and shall continue, trustees of the state library.

Laws of 1824, p. 302, § 22.

§ 11. The secretary of state, by right of office, is and shall be superintendent of common schools, and state sealer of weights and measures.

Laws of 1821, p. 249, § 2; 1 R. L., p. 376, § 2.

TITLE 8.
Superintendent of common schools and state sealer.

§ 12. The mayors of the respective cities in the state are appointed annually by the common councils of the respective cities.

Mayors of cities.

§ 13. The board of supervisors of each county shall appoint some reputable freeholder of the same county to be the treasurer thereof, who shall hold his office during the pleasure of the board appointing him. No supervisor, or clerk of the board of supervisors, shall be appointed to, or hold, the office of county treasurer.

County treasurers.

1 R. L., p. 138, § 4.

§ 14. County sealers of weights and measures shall be appointed, each by the board of supervisors of the county for which he shall be appointed, and shall hold their offices during the pleasure of the board appointing them.

County sealers.

1 R. L., p. 376, § 2.

§ 15. Commissioners for loaning moneys under the act entitled "An act authorising a loan of moneys to the citizens of this state," passed April 11, 1808; loan-officers of the county of Putnam; inspectors of state prisons; superintendents of the salt springs; inspectors of salt in the county of Onondaga; harbor-masters, wardens and branch pilots of the port of New-York; auctioneers; inspectors of flour, of leather, of beef and pork, of distilled spirits, of lumber, flaxseed, and of pot and pearl ashes; the inspector of leaf tobacco in the city and county of New-York; the inspector-generals of staves and heading; cullers of staves and heading; weigher at the quarantine ground on Staten-Island; health officer; resident physician and health commissioner of the city of New-York; the president of the village of Utica; the agent of the Onondaga tribe of Indians; superintendents of the Brothertown Indians; the attorney of the Oneida Indians; and such bank directors as the state may be authorised to appoint, shall be nominated by the governor, and appointed by him, with the consent of the senate.

Commissioners of loans, and other officers, how appointed.

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Laws of 1822, p. 159; 1823, p. 64, § 1; p. 81, § 46; 1825, p. 80; p. 232, § 1; p. 443, § 1; Laws of 1828, ch. 274, § 1.

§ 16. The officers enumerated in the last section, shall hold their respective offices for two years, except superintendents of salt springs, inspectors of salt in the county of Onondaga, inspector of leaf tobacco in New York, auctioneers and bank directors, who shall hold their offices for one year.

Tenure of their offices

See Laws of 1834, ch. 56, § 11. Laws of 1856, ch. 147, repeals sect. 17, and contains other enactments inconsistent with Rev. Stat.

§ 18. The board of health may supply any vacancy, that may occur in the office of either of the commissioners of health of the city of New-York, whether arising from the

Health officers of New-York.

TITLE 6.

temporary inability of the officer to discharge his duties, or otherwise; but the person so appointed shall hold his office only until such inability be removed, or the sense of the governor, or of the governor and senate be declared.

Laws of 1823, p. 64, § 1.

Loan offices

§ 19. Loan officers under the act entitled "An act for loaning monies belonging to this state," passed the 14th day of March, 1792, shall be appointed and removed, by the votes of at least two-thirds of the board of supervisors of their respective counties, at their pleasure.

Laws of 1821, p. 69, § 8.

Inspectors of hops, &c.

§ 20. Inspectors of hops, of fish, of oil; wreck masters; inspectors of turnpikes; health officers of the cities of Albany and Hudson; the peace-makers of the Brothertown Indians; and the receiver of the profits of the state pier at Sag Harbor, shall be appointed by the governor, and severally hold their offices for the term of two years.

Laws of 1823, p. 81, § 46; p. 244, § 2; 1825, p. 231.

[116]**TITLE VI.**

GENERAL PROVISIONS APPLICABLE TO ALL THE CIVIL OFFICERS OF THIS STATE, OR TO CERTAIN CLASSES OF THEM.

- ART. 1. — General provisions respecting the appointment of officers, their qualifications, the commencement and duration of their offices.
 ART. 2. — Of nominations to offices, and the commissions of officers.
 ART. 3. — Of the oath of office, and the official bond.
 ART. 4. — Of resignations, vacancies and removals, and the means of supplying them.
 ART. 5. — Proceedings to compel the delivery of books and papers by public officers to their successors.

ARTICLE FIRST.

GENERAL PROVISIONS RESPECTING THE APPOINTMENT OF OFFICERS, THEIR QUALIFICATIONS, THE COMMENCEMENT AND DURATION OF THEIR OFFICES.

- SEC. 1. No person can hold an office unless twenty-one years of age and a citizen.
 2. Members of common councils of cities ineligible to certain offices.
 3. When officers to enter on their duties.
 4. Officers not otherwise provided for, to be appointed by governor and senate.
 5. Assistants and deputies, how to be appointed.
 6. Their number, how limited.
 7. Their powers during a vacancy, &c.
 8. Offices, when to be held during pleasure of appointing power.
 9. Certain officers to act until their successors are qualified.
 10. Sheriffs and clerks of counties to act in like manner.

General disabilities.

§ 1. No person shall be capable of holding a civil office, who, at the time of his election or appointment, shall not have attained the age of twenty-one years, and who shall not then be a citizen of this state.

3 W., 438.

Members of common council

§ 2. No person elected to the common council of any of the cities in this state, shall, during the term for which he shall

have been elected, be appointed to any office of profit in the gift of such common council; but this prohibition shall not extend to any officers, whose appointment is, by the constitution, vested in the common council of any city.

ART 2.
when elig-
ble.

§ 3. All officers elected by the people, unless they shall be elected to supply vacancies then existing, shall enter on the duties of their respective offices on the first day of January following the election at which they shall be chosen.

Commence-
ment of
office.

§ 4. Every officer, the mode of whose appointment is not prescribed by the constitution, or is not, or shall not be prescribed by law, shall be nominated by the governor, and appointed by him, with the consent of the senate.

Appointing
power.

§ 5. All assistants, deputies, and other subordinate officers of every description, whose appointment is not, or shall not be specially provided for, shall be appointed by the body, board or officer, to which, or to whom, they shall be respectively subordinate.

Deputies,
&c., by
whom to be
appointed.
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§ 6. When the number of such subordinate officers is not or shall not be directed by law, it shall be limited at the discretion of the appointing power.

Their num-
ber.

§ 7. In all cases not otherwise provided for, each deputy shall possess the powers, and perform the duties attached by law to the office of his principal, during a vacancy in such office, and during the absence of his principal.

Their pow-
ers.

§ 8. Every office of which the duration is not prescribed by the constitution, or is not, or shall not be declared by law, shall be held during the pleasure of the authority making the appointment.

Duration of
certain off-
ces.

§ 9. Every officer duly appointed, except the chancellor, justices of the supreme court, and circuit judges, who shall have duly entered on the duties of his office, shall continue to discharge the duties thereof, although his term of office shall have expired, until a successor in such office shall be duly qualified.

Officers to
hold over.

Laws of 1824, 380; 9 Pal., 509.

§ 10. Sheriffs and clerks of counties, including the register and clerk of the city and county of New York, shall in like manner continue to discharge the duties of their offices, until their respective successors shall be duly qualified.

1 R. L., 420, § 4.

ARTICLE SECOND.

OF NOMINATIONS TO OFFICES, AND THE COMMISSIONS OF OFFICERS.

SEC. 11. Nominations of governor to senate how made.

12. When senate concur, clerk to deliver certified copies.

13. When an officer is removed by the legislature copy of resolution to be delivered.

14. Commissions of civil officers, how made out.

15. Commissions and supersedeas how forwarded.

16. When messengers to be sent, and notice to be published.

17. Certificates of board of canvassers to be evidence of election.

TITLE 6. SEC. 18. Certificate of his appointment to each commissioner of deeds.
 — 19. Other officers, how commissioned.

**Nomina-
tions to be
written, &c.** § 11. All nominations made by the governor to the senate, shall be in writing. Except in the nomination of a chancellor, chief justice, or justice of the supreme court, he shall designate the district, county, city, or place for which the officers nominated are intended to be appointed, and the place of residence of the candidate nominated.

**Resolution
of concur-
rence.** § 12. Whenever any person nominated by the governor shall have been appointed by the senate to any civil office, or any officer shall be removed by the senate on the recommendation of the governor, it shall be the duty of the clerk of the senate immediately to deliver a copy of the resolution of concurrence in such nomination or recommendation, certified by the president and the clerk of the senate, to the secretary of state, and another copy certified by the clerk, to the governor.

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**Resolution
of removal.** § 13. Whenever any officer, whose nomination is vested in the governor, shall be removed by a joint resolution of the two houses of the legislature, it shall be the duty of the clerk of the house in which such resolution originated, immediately to deliver a certified copy thereof to the governor.

**Commis-
sions, how
made out.** § 14. The commissions of all civil officers appointed by the governor and senate, or by the governor, shall be signed by the governor, and attested by the secretary of state, under the seal of this state, and shall be recorded by the secretary.

**How for-
warded.** § 15. When any such appointment shall be made, or any person shall be superseded in office, the secretary of state shall send such commission or supersedeas, by mail or otherwise, to the clerk of the county wherein the person so appointed or superseded shall reside.

1 R. L., 459, § 4.

Id. § 16. Whenever the governor shall so direct, the secretary of state shall despatch a messenger to the person so appointed or superseded, or to the clerk of the county, with the commission or supersedeas; and whenever directed by the governor, he shall also cause notice of such supersedeas to be published for two weeks successively in the state paper; which publication shall be deemed a sufficient notice within the provisions of this Title.

1 R. L., 459, §§ 4, 5.

**Certificate
of canvass-
ers.** § 17. The certificates of the board of canvassers authorized to canvass the votes given for any elective office, shall be evidence of the election of the persons therein declared to have been elected.

20 W., 13.

**Commis-
sioners of
deeds.** § 18. A duplicate certificate of the appointment of commissioners of deeds in towns, signed by the first judge and the chairman of the board of supervisors, shall be made and delivered to each commissioner appointed, which shall be deemed his commission.

§ 19. The commissions of all other officers, where no special provision is made by law, shall be signed by the presiding officer of the board or body, or by the person, making the appointment.

ART. 2.
Commissions of
other officers.

ARTICLE THIRD.

OF THE OATH OF OFFICE, AND THE OFFICIAL BOND.

SEC. 20. Persons elected or appointed to civil offices, to take oath.

21. Time within which such oath is to be taken.

22. Before whom such oath may be taken.

23. Justices of the peace and commissioners of deeds to take oath before county clerk.

24. Oaths to be deposited with certain officers.

25. Deputies to take oaths.

26. Official bonds to be filed the same time that oath is to be filed.

27. Notice to be given of neglect to file official bond or oath.

28. Duty of the comptroller when bond was to have been filed with him.

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29. Bond to be in full force so long as the officer discharges the duties.

30. But the sureties are exonerated after the renewal of such bond.

31. Persons executing offices without oath or bond, to forfeit such offices, &c.

32. Members of legislature may take the oath at any time during their term of office.

§ 20. Every person who shall be elected or appointed to any civil office or public trust embraced in this chapter, before he shall enter on the duties of such office or trust, shall take the following oath or affirmation: "I do solemnly swear," or "affirm," as the case may be, "that I will support the constitution of the United States, and the constitution of the state of New York, and that I will faithfully discharge the duties of the office of _____ according to the best of my ability."

Oath of
office.

§ 21. Whenever a different time shall not be prescribed by law, such oath of office shall be taken and subscribed, and deposited in the proper office, within fifteen days after the officer shall be notified of his election or appointment, or within fifteen days after the commencement of his term of office.

When to be
taken.

§ 22. The oath may be taken and subscribed, except where otherwise provided, before the chancellor, any justice of the supreme court, any circuit judge, the secretary of state, the attorney-general, the lieutenant-governor, the president of the senate for the time being, the speaker of the house of assembly, any judge of any county court, any mayor or recorder of any city, the clerk of any county or city or of any court of record.

Before
whom.

§ 23. The oath of justices of the peace and commissioners of deeds shall be taken before the clerk of the county for which they have been elected or appointed.

2 B., 324.

§ 24. Every such oath, duly certified by the officer before whom the same was taken, shall be deposited within the time required by law, as follows:

With whom
deposited.

1. The oath of the governor, lieutenant-governor, chancellor, justices of the supreme court, comptroller, secretary of state, attorney-general, treasurer, surveyor-general; of the members

TITLE 6.

of the senate and assembly, and of the clerks, sergeants-at-arms and door-keepers thereof; of the canal commissioners, and all other executive and administrative officers, whose authority is not limited to any particular district or county, except where otherwise directed; in the office of the secretary of state.

2. The oath of circuit judges, in the office of the clerk of the county in which they respectively reside.

[120] 3. The oaths of counsellors, solicitors, and attornies, shall be taken before the court of which they are respectively officers, and shall be deposited in the office of the clerk or register of such court.

4. The oath of registers and clerks in chancery, and of clerks of courts of equity and common law, shall be deposited in their respective offices.

5. The oath of supreme court commissioners, notaries public, superintendents of canal repairs, and collectors of canal tolls, in the office of the clerk of the county in which they reside.

6. The oath of all judicial, executive and administrative officers appointed or elected for any county or city, and of all officers whose duties are local, or whose residence in any particular district or county is prescribed by law, in the office of the clerk of the county in which they reside.

Deputies' oath.

§ 25. Whenever any officer is authorised or required by law to appoint a deputy, such deputy shall take the same oath of office within fifteen days after his appointment, and shall cause the certificate thereof to be filed in the office where his principal is required to file his oath.

Official bond.

§ 26. Whenever any officer is required by law to execute any official bond, he shall cause the same to be filed in the proper office, within the time herein prescribed for filing his oath of office, unless otherwise provided by law.

Notice of neglect.

§ 27. In case any officer who is required to file the certificate of his oath of office, or his official bond, with the secretary of state or with any county clerk, shall neglect to do so within the time required by law, it shall be the duty of such secretary or clerk immediately to give notice of such neglect to the governor. And when any justice of the peace shall neglect to file the certificate of his oath of office, the county clerk shall also give notice of such neglect, to the supervisor of the town for which such justice was elected.

Ib.

§ 28. Whenever any official bond is required by law to be filed with the comptroller, and there shall be a neglect to file the same within the time prescribed, the comptroller shall immediately give notice thereof to the governor, in case the officer was commissioned by him, and if not so commissioned, then to the board or body which appointed the officer so neglecting.

Effect of bond.

§ 29. Every bond, executed by any officer pursuant to law for the faithful discharge of the duties of his office, shall be

deemed to be in force and obligatory upon the principal and sureties therein, so long as such officer shall continue to discharge the duties of his office, and until his successor shall be appointed and duly qualified.

§ 30. But the sureties in any such bond shall be exonerated from all liability by reason thereof, for all acts or omissions, of their principal, after he shall have duly renewed any official bond, pursuant to law. Effect of bond. [191]

§ 31. If any person shall execute any of the duties or functions of any office, without having taken and subscribed the oath of office required by law, or without having executed and filed in the proper office any bond required by law, he shall forfeit the office to which he may have been elected or appointed, and shall be deemed guilty of a misdemeanor punishable by fine or imprisonment. Penalty for acting without oath or bond.

I R. L., 385, § 11, 2 B., 324.

§ 32. Members of the legislature may take the oath of office at any time during the term for which they were elected. Legislature.

ARTICLE FOURTH.

OF RESIGNATIONS, VACANCIES AND REMOVALS, AND THE MEANS OF SUPPLYING THEM.

Sec. 33. Resignations to what officers to be made.

34. Offices when to become vacant.
35. When officer convicted of any infamous crime, &c. court to give notice.
36. Governor to give notice to fill vacancy or order election.
37. When officers die or remove, county clerk to give notice to governor.
38. Governor may remove all officers who are appointed by him.
39. Treasurers and receivers of public money may be removed by the governor.
40. If judgment be obtained for a breach of an official bond, governor may declare office vacant.
41. Certain officers, may be removed by the senate, on the recommendation of the governor.
42. Governor may supply certain vacancies by temporary appointments.
43. If a vacancy, in the office of treasurer, &c. governor may supply vacancy.
44. Governor may remove sheriffs, clerks, &c.
45. May direct district attorney to conduct an enquiry into the truth of the charges.
46. District attorney may issue process of subpoena.
47. Officer accused to be entitled to the like process.
48. County judge to take and certify the testimony.
49. If a vacancy in the office of sheriff, or clerk, governor to fill vacancy by temporary appointment.

§ 33. Resignations shall be made as follows :

1. By the governor, lieutenant-governor, secretary of state, comptroller, treasurer, attorney-general, surveyor-general and state printer, to the legislature.
2. By all officers appointed by the governor alone, or by him with the consent of the senate, to the governor.
3. By senators and members of assembly, to the presiding officers of their respective houses, who shall immediately transmit the same to the secretary of state.
4. By sheriffs, coroners, county clerks, and register of New-York, to the governor.

Resignations to whom to be made.

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5. By district attorneys, to the court which appointed them.
6. By justices of the peace, to the supervisor of the town.
7. By commissioners of deeds for towns, to the first judge of the county.
8. By all other officers, to the body, board or officer that appointed them.

1 D., 649; 9 How. P. R., 414.

When offices become vacant.

§ 34. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office :

1. The death of the incumbent.
2. His resignation.
3. His removal from office.
4. His ceasing to be an inhabitant of the state, or if the office be local, of the district, county, town or city for which he shall have been chosen or appointed, or within which the duties of his office are required to be discharged.
5. His conviction of an infamous crime, or of any offence involving a violation of his oath of office.
6. His refusal or neglect to take the oath of office within the time required by law, or to give or renew any bond, within the time prescribed by law.
7. The decision of a competent tribunal, declaring void his election or appointment.

Notice of conviction.

§ 35. Whenever any officer shall be convicted of an infamous crime, or of an offence involving a violation of his oath of office, and whenever any election or appointment of any person shall be declared void, the court before which such conviction shall be had, or by which such decision shall be made, shall immediately give notice thereof, to the governor, stating the cause of such conviction or decision.

Duty of governor.

§ 36. The governor shall immediately give notice of the vacancy created by such conviction or decision, to the body, board, or officer, in whom the appointment to the office is vested, or whose duty it may be by law, to order or give notice of, an election to supply the vacancy.

Notice of vacancy.

§ 37. Whenever any officer shall die before the expiration of his term of office, or shall remove from the county, district or place for which he was appointed, the county clerk of the county in which such officer resided, shall immediately give notice of such vacancy to the governor.

Governor's power of removal.

§ 38. All officers who are or shall be appointed by the governor for a certain time, or to supply a vacancy, may be removed by him.

Id.

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§ 39. The office of treasurer, or of any other collector or receiver of public monies, appointed by the legislature, by the governor and senate, or by the governor, except those officers for whose removal provision is otherwise made by law, may be declared vacant by the governor, in case it shall appear to him on the report of the comptroller, that such treasurer

or other officer, has in any particular, wilfully violated his duty.

ART. 6

1 R. L., 473, § 3

§ 40. The governor may also declare vacant, the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

Breach of official bond.

§ 41. All officers appointed by the governor with the consent of the senate, except the chancellor, the justices of the supreme court, and the circuit judges, may be removed by the senate, on the recommendation of the governor.

Removal of officers appointed by governor and senate.

Laws of 1823, 63, §§ 7 & 8; 243, § 1; 9 Pal., 509; 9 How. P. R., 414.

§ 42. The governor may supply all vacancies that may happen during the recess of the senate, in any office to which an appointment shall have been made by the governor, with the consent of the senate, except in the office of chancellor, justice of the supreme court, circuit judge, judge of county courts, and recorders of cities, by granting commissions, which shall expire at the end of twenty days from the commencement of the next meeting of the senate.

Temporary appointments by governor.

§ 43. Whenever a vacancy shall occur during the recess of the legislature, in the office of treasurer, or of any other officer appointed by the legislature, the governor shall appoint a person to execute the duties of the office, who shall hold his office, until such vacancy shall be regularly supplied.

§ 44. The governor may remove the sheriff, any coroner, or clerk of any county, or the register or clerk of the city and county of New York, at any time within the term for which he shall have been elected, giving to such officer a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made.

Removal of sheriffs, clerks, &c., on charges.

2 H., 98.

§ 45. The governor may direct the district attorney of the county in which such officer shall be, to conduct an enquiry into the truth of the charges made; who shall give at least eight days' notice to the officer accused, of the time and place when he will proceed to the examination of witnesses, before some judge of the county courts.

District attorney to enquire into charges.

§ 46. The district attorney may issue process of subpoena in his own name, and with the like effect as in cases of complaints before grand juries, to compel the attendance of any witness whom he shall deem material, before the county judge; and such judge shall have the same power to enforce obedience to such subpoenas by attachment, and to commit any person who shall refuse to be sworn or to answer, as the court of common pleas would have in a civil cause pending therein.

Proceedings thereupon.

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§ 47. On the application of the officer accused to the district attorney, or to any justice of the peace, he shall be entitled to the like process of subpoena, which may be enforced in the

TITLE 6.

Proceed-
ings.

same manner, by the judge before whom the enquiry shall be conducted.

§ 48. At the time and place specified in such notice, the county judge before whom the enquiry shall be conducted, shall proceed to take the testimony of the witnesses produced before him by the district attorney, or by the accused officer; the witnesses shall be sworn by such judge; every answer given by them to any question which either party shall require to be reduced to writing, shall be written; their testimony shall be read to and subscribed by them, and shall be certified by the judge taking the same, and delivered to the district attorney, to be by him transmitted to the governor.

Vacancies
in office of
sheriff and
clerk.

§ 49. In every case where a vacancy shall occur in the office of sheriff or county clerk, including the clerk and register of the city and county of New-York, except where such vacancy shall arise from the death of the incumbent, the governor shall appoint some fit person who was eligible to the office to execute the duties thereof, until it shall be supplied by an election. The person so appointed, after taking the oath of office, and executing a bond, if one be required of the officer in whose place he shall be appointed, shall possess all the rights and powers, and be subject to all the duties and obligations, of the officer so removed.

6 H., 52.

ARTICLE FIFTH.

PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS AND PAPERS BY
PUBLIC OFFICERS TO THEIR SUCCESSORS.

SEC. 50. Persons going out of office, to deliver over books, &c., to successors.

51. On neglect so to do, successor may apply for an order to show cause.
52. Proceedings at the time appointed for showing cause.
53. If books, &c., are withheld, officer shall commit him to jail.
54. Officer may then also issue search warrant.
55. Proceedings on return of search warrant.
56. Upon the death of any officer, the like proceedings may be had.

Books and
papers to be
delivered to
successors.

§ 50. Whenever any person shall be removed from office, or the term for which he shall have been elected or appointed shall expire, he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer, or in any way appertaining to his office. Every person violating this provision, shall be deemed guilty of a misdemeanor.

Penalty.

2 B., 520; 5 H. 616; 9 How. P. R., 414; 8 How. P. R., 369; 7 How. P. R., 124, 173, 282.

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Delivery,
how en-
forced.

§ 51. If any person shall refuse or neglect to deliver over to his successor any books or papers, as required in the preceding section, such successor may make complaint thereof to the chancellor, any justice of the supreme court, any circuit judge of the circuit, or the first judge of the county, where the person so refusing shall reside; and if such officer be satisfied by the oath of the complainant, and such other testimony as shall be offered, that any such books or papers

are withheld, he shall grant an order, directing the person so refusing to show cause before him, within some short and reasonable time, why he should not be compelled to deliver the same.

11 How. P. R., 418.

§ 52. At the time so appointed or at any other time to which the matter may be adjourned, upon due proof being made of the service of the said order, such officer shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers, shall make affidavit before such officer, that he has truly delivered over to his successor, all such books and papers in his custody or appertaining to his office, within his knowledge, all further proceedings before such officer shall cease, and the person complained against shall be discharged.

Proceedings.

§ 53. If the person complained against shall not make such oath, and it shall appear that any such books or papers are withheld, the officer before whom such proceedings shall be had, shall by warrant commit the person so withholding, to the jail of the county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law.

Ib., when person may be committed.

§ 54. In the case stated in the last section, if required by the complainant, such officer shall also issue his warrant directed to any sheriff or constable, commanding them, in the day time, to search such places as shall be designated in such warrant, for such books and papers as belonged to the officer so removed, or whose term of office expired, in his official capacity, and which appertained to such office, and seize and bring them before the officer issuing such warrant.

Search warrant, when issued.

§ 55. Upon any books and papers being brought before such officer, by virtue of such warrant, he shall inquire and examine whether the same appertain to the office, from which the person so refusing to deliver, was removed or of which the term expired, and he shall cause the same to be delivered to the complainant.

Proceedings thereupon.

§ 56. If any person appointed or elected to any office, shall die, or his office shall in any way become vacant, and any books or papers belonging or appertaining to such office, shall come to the hands of any person, the successor to such office may, in like manner as herein before prescribed, demand such books or papers, from the person having the same in his possession; and on the same being withheld, an order may be obtained, and the person charged, may in like manner, make oath of the delivery of all such books and papers that ever came to his possession; and in case of omission to make such oath, and to deliver up the books and papers, so demanded, such person may be committed to jail, and a search warrant may be issued, and the property seized by virtue thereof, may be delivered to the complainant, as herein before prescribed.

Books and papers, how obtained when officer dies, &c.

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CHAP. VI.**Of Elections, other than for Militia and Town Officers.**

(Took effect June 1, 1838.)

[Chapter VI. was repealed by Laws of 1842, ch. 130, and a new election law substituted. The new law is nowhere declared to be a part of the Revised Statutes, but by Laws of 1854, ch. 266, it is recognized as part of the Revised Statutes, and is therefore inserted here.]

AN ACT respecting elections other than for Militia and Town Officers.*

PASSED April 5, 1842.

The People of the state of New-York, represented in Senate and Assembly, do enact as follows:

- TITLE 1.** — Of the qualifications, disabilities and privileges, of electors.
TITLE 2. — Of general and special elections, the time and purpose of holding them, and the persons by whom held.
TITLE 3. — Of the notices to be given.
TITLE 4. — Of the manner of conducting elections.
TITLE 5. — Of the final canvass, and the mode of declaring and certifying the result.
TITLE 6. — Of the election of representatives in congress, electors of president and vice-president, and senators in congress.
TITLE 7. — Penalty for violating the provisions of this chapter, and for misconduct at elections.
TITLE 8. — Miscellaneous provisions.

TITLE I.**OF THE QUALIFICATIONS, DISABILITIES AND PRIVILEGES OF ELECTORS.**

SEC. 1 & 2, repealed.

3. Disqualification for crime.
 4. Privileges of electors.
 5. No courts to be held on election days.

Disabilities

§ 3. No person who shall have been convicted of an infamous crime, deemed by the laws of this state a felony, at any time previous to an election, shall be permitted to vote thereat, unless he shall have been pardoned before or after his term of imprisonment has expired, and restored by pardon to all the rights of a citizen.

Privileges.

§ 4. Whenever an election shall be held in any city or town, pursuant to this chapter, no declaration by which a suit shall be commenced, or any civil process, or proceeding in the nature of civil process, shall be served on any elector entitled to vote in such city or town, on the day on which such election shall be held.

Restrictions.

§ 5. No court shall be opened, or transact any business, in any city or town, on the day such election shall be held therein, unless it be for the purpose of receiving a verdict or

* As amended by Laws of 1847, ch. 240.

discharging a jury, and every adjournment of a court in such city or town, on the day next preceding the day any such election shall be held therein, shall always be to some other day than the day of such election, except such adjournment as may be made after a cause has been committed to a jury. But this section shall not prevent the exercise of the jurisdiction of any single magistrate, when it shall be necessary in criminal cases to preserve the peace, or to arrest offenders.

TITLE II.

OF GENERAL AND SPECIAL ELECTIONS; THE TIME AND PURPOSE OF HOLDING THEM; AND THE PERSONS BY WHOM HELD.

- SEC. 1. What are general elections.
 2. Clerk, &c., of New York to be then chosen.
 3. What are special elections.
 4 & 5. Elections when and how long to be held.
 6. Special elections in what cases.
 7. Vacancies, when not filled.
 8 & 9. Vacancies, how supplied.
 10. Special elections how ordered.
 11. Governor's proclamation.
 12. Elections to be by districts.

§ 1. General elections are such as are held at the same time in every county, for the election of all or of some of the following officers, namely: governor, lieutenant-governor, judges of the court of appeals, justices of the supreme court, clerk for the court of appeals, secretary of state, comptroller, state treasurer, attorney-general, state engineer and surveyor, canal commissioners, inspectors of state prisons, district-attorneys, county judges, senators, members of assembly, sheriffs, clerks of counties, coroners, representatives in congress, and electors of president and vice-president.

General elections.

§ 2. The register and clerk of the city and county of New-York, shall also be chosen at a general election.

General elections.

§ 3. Special elections are such as are held only in a particular district or county, at a time when no general election is held, for the choice of one or more of the officers proper to be chosen at a general election.

Special elections.

§ 4. General elections shall be held on the Tuesday succeeding the first Monday of November, in every year; special elections at the times and places of which legal notice shall have been given; but no special election shall be held within forty days previously to a general election.

When held.

§ 5. General and special elections shall be held for one day only.

Duration.

§ 6. Special elections shall be held in the following cases:

Special elections.

1. When an officer other than a Governor, Lieutenant-Governor and Elector of President and Vice-President, proper to be chosen at a general election, shall not have been chosen by reason of two or more candidates having received an equal number of votes for the same office;

TITLE 2.

2. When the right of office of a person elected to the office of a representative in congress, senator, member of the assembly, sheriff, or clerk of any county, or sheriff, clerk, or register of the city and county of New York, shall cease before commencement of the term of service for which such officer shall have been elected;
- Vacancies.** 3. When a vacancy occurs in the office of any senator or member of assembly, after the last day of December in any year, and before the first day of March following;
- Ibid.** 4. When in case of an extra session of the legislature, a vacancy in the office of a member of assembly or senator shall occur between the first day of April and ten days before the time appointed for such extra session.
- Vacancies.** § 7. When a special election shall not have taken place, as required by law, the vacancy which ought to have been supplied by such election shall be supplied at the next general election.
- Ibid.** § 8. All vacancies in any of the offices named in the first and second sections of this title, except governor, lieutenant-governor, electors of president and vice-president, senators and members of Assembly, shall be supplied at the general election next succeeding the happening thereof.
- Ibid.** § 9. If a vacancy proper to be supplied at a general election, shall not have been supplied at a general election next succeeding the happening thereof, a special election to supply such vacancy shall then be held.
- Special elections, how ordered.** § 10. Special elections in the first case provided for in the sixth section of this title, shall be ordered by the board of canvassers having the power to determine on the election of the officer omitted to be chosen; and in all other cases such election shall be ordered by the governor, who shall issue his proclamation therefor.
- Proclamation.** § 11. Such proclamation shall specify the county or district in which such special election is to be held; the cause of such election; the name of the officer in whose office the vacancy has occurred; the time when his term of office will expire; and the day on which such election is to be held, which shall not be less than twenty nor more than forty days from the date of the proclamation.
- Elections, how held.** § 12. The elections in the several cities and towns shall be by election districts.

TITLE III.

OF THE MODE OF NOTIFYING GENERAL AND SPECIAL ELECTIONS.

ART. 1. — Of the notice to be given by the Secretary of State.

ART. 2. — Of the notices to be given by the county and State canvassers.

ART. 3. — Of the notices to be given to town officers; the formation of election districts, and the appointment of inspectors of election thereof.

ARTICLE FIRST.

ART. 1.

OF THE NOTICES TO BE GIVEN BY THE SECRETARY OF STATE.

- SEC. 1. Notice of a Governor's election.
2. Like, of senators and county officers.
3. Like, on filling a vacancy.
4. Like, of a special election.
5. Like, of Governor's proclamation.

§ 1. The Secretary of State shall once in every two years, between the first day of July and the first day of September, immediately preceding the expiration of the term of office of the Governor and Lieutenant-Governor last chosen, direct and cause to be delivered to the sheriff, clerk, or county judge of each county, a notice in writing, that at the next general election, a Governor and Lieutenant-Governor are to be elected.

Governor and lieutenant-governor's election.

§ 2. The Secretary of State shall, between the first days of July and September in each year, direct and cause to be delivered to the sheriff or clerk or county judge of each county, a notice in writing, specifying all the officers (county officers excepted) specified in the first section of title second of this act, whose term of service shall expire on the last day of December thereafter, and a like notice specifying the several officers to be chosen in such county at the next general election.

Senators and county officers.

§ 3. If any vacancy shall exist in a county, proper to be supplied at the ensuing general election, he shall in like manner, between the first day of July and the fifteenth of October previous to such election, direct and cause to be delivered to the sheriff, clerk or county judge of such county, a notice in writing, specifying the cause of such vacancy; the name of the officer in whose office it has occurred, and the time when his term of office will expire; and if any such vacancy shall exist in a district, he shall in like manner direct and cause to be delivered to the sheriff, clerk or first judge of each county therein, the like notice.

Vacancies.

§ 4. When a special election shall have been ordered by the governor in a county, the secretary of state shall forthwith cause a copy of the governor's proclamation to be delivered to the sheriff, clerk or county judge of such county; and when ordered in a district, to the sheriff, clerk or county judge of each county therein.

Special elections.

§ 5. The secretary of state shall cause a copy of each notice issued by him, and of such proclamation of the governor, to be published in the state paper, once in each week from the date of such notice or proclamation, until the election to which it shall refer.

Publications.

ARTICLE SECOND.

OF THE NOTICES TO BE GIVEN BY THE COUNTY AND STATE CANVASSERS.

- SEC. 6. In case of equality of votes.
7. Notice by whom given.

§ 6. When a special election shall be necessary, in the case of an equality of votes, provided for in the second title of this

Notices, when and how given.

TITLE 2.

chapter, the board of canvassers having power to determine on the election of the officer omitted to be chosen, shall, without delay, direct and cause to be delivered to the sheriff, clerk, or county judge of each county in the district, or of the county in which such election is to be held, a notice specifying the officer to be chosen; the time for which he is to be chosen, and the day on which such election is to be held; which day shall not be less than twenty nor more than forty days from the date of such notice.

How signed § 7. The notice of such an election, if ordered by the board of state canvassers, shall be signed by the secretary of state, and if ordered by the county canvassers, by the chairman and clerk of the board.

ARTICLE THIRD.

OF THE ELECTIONS IN CITIES AND TOWNS; OF THE NOTICES TO BE GIVEN TO CITY AND TOWN OFFICERS; THE FORMATION OF ELECTION DISTRICTS, AND THE APPOINTMENT OF INSPECTORS OF ELECTION THEREOF.

SEC. 8. Election districts in cities.

9. Wards when to be districts.
10. Maps of ward districts.
11. Inspectors to be appointed.
12. Who qualified to be such.
13. Who may act.
14. Notice by sheriff, clerk, &c.
- 15 & 16. Districts in towns.
17. Like, in new towns.
18. Places of holding elections.
- 19 & 20. First inspectors under the law.
21. Inspectors to be annually chosen.
22. Vacancies among inspectors.
23. Pay of inspectors.
24. When towns are not districted.

Election districts in cities.

§ 8. The several cities of this state shall be divided by the common council of the said cities respectively, into convenient election districts for the holding of all general and special elections, and all elections of the officers of such cities who are elective by the people.

Ward districts.

§ 9. Every ward in the city, containing not more than five hundred voters, shall be an election district; every ward in a city containing more than five hundred voters and not more than eight hundred voters, may, on or before the first Monday of October next, or in any year thereafter, be divided by the common council of such city, if they shall deem expedient, into two districts, to contain, as near as may be, an equal number of voters; and every ward of a city containing more than eight hundred voters, shall, on or before the first Monday of October next, and as often annually thereafter as may be necessary or expedient, be divided by the common council of such city into two or more districts, in such manner as shall be entire within one ward, and shall contain, as near as may be, an equal number of voters; and no district shall contain more than eight hundred voters.

§ 10. Whenever a ward shall be divided into two or more districts, the common council shall immediately publish the same, by making a map or description of such division, defining it by known boundaries, and keeping such map or description open for public inspection in the office of the clerk of such city, and also by posting up copies of such map in at least ten of the most public places in each district of such ward; and the common council shall, also, prior to every election, furnish copies of such map and description to the inspectors of election in each district of such ward.

ART. 2.
Map of
ward dis-
tricts to be
made.

§ 11. Until inspectors of election shall by law, be chosen and appointed at the charter election of any city, the common council of such city shall, at least ten days before every general election, appoint three inspectors of election for each election district in said city.

Inspectors
of election.

§ 12. The inspectors so appointed shall be qualified voters and residents in such districts, and shall be inspectors, also, of all special elections held in such city during the ensuing year.

Their quali-
fications.

§ 13. Any two of such inspectors may act, and in case of the death or inability of either of them, the common council may thereafter appoint another in his place.

Two may
act.

§ 14. The sheriff, clerk, or county judge of each county, who shall receive a notice of an election, shall, without delay, deliver a copy of such notice to the supervisor or one of the assessors of each town or ward in his county. He shall also cause a copy of such notice to be published in all the public newspapers in his county, once in each week until the election therein specified; if there be none printed in his county, then in some newspaper of an adjoining county.

Notice by
sheriff, &c.

§ 15. The supervisor, assessors and town clerk of each town shall meet at the town clerk's office in such town on the first Tuesday in September next, at ten o'clock in the forenoon, and form themselves into a board. And in case a majority of said officers, for any cause, do not attend on that day, it shall be the duty of those who do attend, to adjourn to some future day, not exceeding five days, and shall immediately thereupon give notice to those officers who do not attend, of the time of such adjournment; and it shall be the duty of all said officers to attend on such adjourned day, and to proceed in the same manner as though a majority had attended on the day appointed by law; and adjournments from time to time may be had by said officers, as occasion may require; but no such adjournments shall extend beyond the first day of October in said year. They shall, in all cases where any town shall contain more than five hundred electors, divide the same into a convenient number of election districts, so that each district shall be in a compact form within their town, and shall contain not more than five hundred electors, as far as the number can be ascertained. But where any town shall contain less than five hundred electors, the board may, in

Towns,
how to be
divided in-
to election
districts in
1842.

TITLE 8.

their discretion, divide the same into districts. They shall make a certificate of such division, under their hands, in which such districts shall be numbered and described by known boundaries, which shall be immediately filed in the office of the town clerk. The town clerk shall, at least two weeks before the day of election, put up copies of the said certificates in at least four public places in each of the said districts, within ten days after such meeting; and he shall deliver a copy thereof to an inspector in each district before the day of election.

In every
succeeding
year.

§ 16. In every succeeding year the same officers shall meet at the town clerk's office, on the first Monday of October, at ten o'clock in the forenoon, and form a board. They shall determine whether any alteration in the existing election districts be necessary or expedient, and shall have power to make the same, subject to the same restrictions and limitations contained in the last preceding section; and shall, in like manner, make a certificate of such alterations, exhibiting the districts as altered and their numbers respectively; which certificate shall be filed in the town clerk's office. Such alteration shall not take effect until after the then next general election, except in case of the alteration, erection or division of a town, in which case it shall take effect immediately.

New towns,
how di-
vided.

§ 17. When any new town shall be formed, the supervisor, town clerk and assessors therein, shall meet at the town clerk's office, on or before the first Tuesday in September preceding the first general election to be held in such town, and divide the same into districts as herein prescribed, and the same proceedings, in all respects, shall be had as herein provided in respect to towns now existing.

Places of
holding
election,
how de-
signed.

§ 18. The common council of each city, and the said town officers of each town, on the first Tuesday of September next, and on the first Monday in October in each year thereafter, shall designate the place in each election district in such city or town at which elections shall be held during the year; and they shall thereupon give notice, written or printed, to be posted in at least eight public places in each district, containing a description of such place so designated, and of the time of opening and closing the poll. The said town officers shall, at their meeting on the first Tuesday of September next, assign at least three of their number to hold the election in each district, and if there be not a sufficient number for that purpose, they shall assign one or more of their number to each district, and shall select from among the justices of the peace, the commissioners of common schools, and the commissioners of highways of such town, as many as shall be necessary, in addition to those previously assigned, to constitute at least three inspectors of election for each district; and such inspectors shall be allowed to vote in the district where they shall be respectively assigned. The selections shall be made from the officers aforesaid, in the order herein named,

Officers to
be assigned
and selec-
ted.

residing in the district to which they shall be assigned, if there be sufficient for the purpose. A certificate specifying the officers thus assigned and selected for each district, shall at the same time be signed by the board, and filed in the office of the town clerk, who shall immediately cause notice thereof to be given to the officers selected. And in case a majority of said common council in any city, or a majority of said town officers, shall for any cause fail to attend for the purposes aforesaid, on the days above mentioned, the same powers are given in relation to adjournments, and the same duties are required in all particulars, as are given in the fifteenth and sixteenth sections of this title to town officers, except that no adjournments shall extend beyond the fifteenth day of October in each year.

§ 19. The officers thus assigned and selected shall be inspectors of all general and special elections held in the several districts for which they shall have been appointed, until the annual town meeting in such town in the year one thousand eight hundred and forty-three.

District inspectors in 1843.

§ 20. In case any of the persons assigned or selected as inspectors shall not be in office at the time appointed for holding any election, their successors shall be such inspectors; and in case of a vacancy in any of the said offices, or of the absence or inability of any officer to act as inspector at any election, by which the number of inspectors for a district shall be reduced below three, the supervisor of the town, or in case of a vacancy in his office, or his absence or inability, the town clerk, shall designate so many of the justices of the peace or commissioners of common schools, or of the commissioners of highways of the town, as shall be necessary to supply such numbers in the order in which they are herein named, who shall be inspectors of such election for such district.

Vacancies, how supplied.

§ 21. At each town meeting to be held in the several towns of this state, and at each annual charter election to be held in the several cities of this state, which are not organized into towns, after the first day of January next, the electors of such city or town shall be entitled to vote by ballot, on the same ticket with other town or charter officers, for two electors residing in each election district of such town or city, to be inspectors of election for such city or town; and the two persons in each district receiving the greatest number of votes, shall be two of the inspectors of election for such district at all elections to be held therein the ensuing year. The presiding officers of such town meeting, or charter election, shall immediately after the votes of such town meeting or charter election shall be canvassed, appoint by writing, subscribed by a majority of said presiding officers, another inspector of elections for each election district, to be associated with said two inspectors so elected, and who shall thereupon be one of the inspectors of election of such district. Such inspector shall be selected from the two persons in such election district

Inspectors to be annually elected in towns and cities.

TITLE 4.

Vacancies,
how sup-
plied.

who shall have the highest number of votes next to the two inspectors so elected. And no ballot for inspectors shall be counted, upon which more than two names shall be contained.

§ 22. In case any such inspectors in any town shall not be chosen or appointed, as provided for in the preceding section, or any of them shall be absent, or shall have ceased to be a resident of such district, or unable to attend and hold any election in their district, the supervisor, town clerk and justices of the peace in such town, shall meet at such time and place as shall be appointed by the supervisor, or in case of his absence or inability, or a vacancy in his office, by the town clerk, and shall designate and appoint so many electors of such election district, as shall be necessary to supply such vacancy, to be inspectors of election for such district, and shall file a certificate of such appointment in the office of the town clerk; and the persons thus appointed shall be inspectors of such election for such district. And all vacancies which may exist or occur in the office of inspector of election in any city, shall be filled by the common council of such city.

Pay of in-
spectors.

§ 23. The inspectors assigned, elected, designated or appointed as herein prescribed, shall receive the compensation provided by law for inspectors of elections in towns or wards.

Towns or
wards not
divided.

§ 24. Every town or ward that shall not be divided into election districts according to the preceding provisions, shall constitute and be an election district in itself; and all the provisions of this act in relation to election districts, the election or appointment of inspectors of election therein, and their duties and powers, shall apply to such towns or wards and the inspectors of elections therein.

TITLE IV.

OF THE MANNER OF CONDUCTING ELECTIONS.

ART. 1. — Of the formation of the board of inspectors, and the appointment of clerks.

ART. 2. — Of the manner of voting, and of challenges.

ART. 3. — Of the duties of the board of inspectors, and clerks of the poll.

ART. 4. — Of the canvass and estimate of the votes by the board of inspectors.

ARTICLE FIRST.

OF THE FORMATION OF THE BOARD OF INSPECTORS AND THE APPOINTMENT OF CLERKS.

SEC. 1. Inspectors to form a board.

2. To choose a chairman.

3. To appoint two clerks.

4. Clerks to be sworn.

5. Polls how opened and closed.

6. How long to remain open.

Board to be
formed.

§ 1. The inspectors of each election district shall meet at the time and place, when and where an election shall have been appointed to be held therein, and shall proceed to organ-

ize themselves as a board, for the purpose of presiding at and conducting such election.

§ 2. The inspectors shall appoint one of their number chairman of the board, who shall administer to the other inspectors the oath of office, as prescribed by the constitution, and the same oath shall then be administered to the chairman by one of the other inspectors. Chairman.

§ 3. The inspectors, or a majority of them, having severally taken such oath, the board shall then appoint two clerks, to be called clerks of the poll. Clerks.

§ 4. The clerks shall each take the constitutional oath of office, which shall be administered to them by the chairman of the board. Oath.

§ 5. The poll of each election shall then be opened, and proclamation thereof made, and of the time when the same will be closed. Poll opened

§ 6. The poll in the several cities shall be opened at sunrise, and in the several towns at any time between sunrise and nine o'clock in the morning, and shall be kept open till the setting of the sun; and no adjournment or intermission whatever shall take place until the same be closed. How long to be kept open.

ARTICLE SECOND.

OF THE MANNER OF VOTING, AND OF CHALLENGES.

Sec. 7. Voting to be by ballot.

8. Form and contents of ballot.
9. When ballots to be separate.
10. Ballots for presidential electors.
- 11 & 12. Ballots in case of vacancies.
13. Preliminary oath when challenged.
14. Voter to be questioned.
15. Refusal to answer.
16. Qualification to be pointed out.
17. Final oath to be taken.
18. Oath of a colored voter.
19. Refusal to take the oath.
20. Oath of inspector when challenged.
21. When residence shall not be lost.
22. Inspectors to keep minutes.
23. Challenge of a convict.

§ 7. The electors shall vote by ballot; and each person offering to vote, shall deliver his ballot, so folded as to conceal the contents, to one of the inspectors, in the presence of the board. Ballot.

§ 8. The ballot shall be a paper ticket, which shall contain written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person, so named, is intended by him to be chosen; but no ballot shall contain a greater number of names of persons, as designated to any office, than there are persons to be chosen at the election to fill such office. Its form and contents.

TITLE 4.
State.

§ 9. Except as otherwise provided in the subsequent subdivisions of this section, the ballots shall contain as follows:

1. The names of all the persons voted for by any elector at any election, excepting electors of president and vice-president, judges of the court of appeals, justices of the supreme court, county judges, separate officers to perform the duties of the office of surrogate, and local officers to discharge the duties of county judge and surrogate, shall be upon one ballot, which ballot shall be endorsed "State," and the names of all the persons voted for by any elector at any election for judges of the court of appeals, justices of the supreme court, county judges, separate officers to perform the duties of the office of surrogate and local officers to discharge the duties of county judge and surrogate, shall be upon one ballot, which ballot shall be endorsed "Judiciary."

2. In the counties entitled to more than one member of assembly, the name of the person voted for by any elector for member of assembly, at any election, shall be upon a separate ballot and endorsed "Assembly."

3. In the city and county of New-York, the names of all persons voted for by any elector for senator at any election shall be upon a separate ballot and endorsed "Senate."

4. In the city and county of New-York, and in the county of Hamilton, the names of all the persons voted for by any elector for representative in congress at any election, shall be upon a separate ballot and endorsed "Congress."

Electors.

§ 10. When electors of president and vice-president are to be chosen, a separate ballot shall be given for them, which shall be endorsed "Electors," and shall contain the names of persons designated by the voter giving the same, to be electors of president and vice-president, or any of them.

**Term of
senators
designated.**

§ 11. If at a general election there be one or more vacancies to be supplied in the office of judge of the court of appeals, justice of the supreme court, canal commissioner, or inspector of state prisons, and at the same election, one is to be elected to the same office for a full term, the term for which the person voted for is intended, shall be designated on the ballot.

**Congress.
designated.**

§ 12. If at a general election for representatives in congress, any person named in a congress ballot shall be intended to supply a vacancy in the office of such representative, the ballots shall designate the congress for which each person is intended to be chosen.

Challenge.

§ 13. If any person offering to vote at any election shall be challenged in relation to his right to vote at that election, by an inspector, or by any other person entitled to vote at the same poll, one of the inspectors shall tender to him the following preliminary oath: "You do swear (or affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence and qualifications as an elector."

**Preliminary
oath.**

ART. 1.
Questions
to persons
challenged.

§ 14. The inspectors or one of them shall then proceed to question the person challenged in relation to his name; his then place of residence; how long he has resided in the town or ward where the vote is offered; what was the last place of his residence before he came into that town or ward, and also as to his citizenship, and whether a native or naturalized citizen, and, if the latter, when, where, and in what court, or before what officer he was naturalized; whether he came into the town or ward for the purpose of voting at that election; how long he contemplates residing in the town or ward; and all such other questions as may tend to test his qualifications as a resident of the town or ward, citizenship and right to vote at that poll.

§ 15. If any person shall refuse to take the said preliminary oath when so tendered, or to answer fully any questions which shall be so put to him, his vote shall be rejected.

Vote, when
to be re-
jected.

§ 16. After receiving the answers of the persons so challenged, the board of inspectors shall point out to him the qualifications, if any, in respect to which he shall appear to them deficient.

Qualifica-
tions.

§ 17. If the person so offering shall persist in his claim to vote, and the challenge shall not be withdrawn, one of the inspectors shall then administer to him the following oath:

Oath to be
taken if
challenge is
not with-
drawn.

"You do swear (or affirm, as the case may be) that you have been a citizen of the United States for ten days, and are now of the age of twenty-one years; that you have been an inhabitant of this State for one year next preceding this election, and for the last four months a resident of this county; that you have been for thirty days next preceding this election a resident of this assembly district (or senate or congressional district or districts, ward, town, village or city, as the case may be, naming any or all of the foregoing districts, ward, town, village or city from which the officer is to be chosen for whom said person offers to vote); that you are now a resident of this town (or ward, as the case may be) and of the election district in which you now offer to vote, and that you have not made any bet or wager, and are not directly or indirectly interested in any bet or wager depending upon the result of this election, and that you have not voted at this election."

"§ 18. If the person so offering to vote be a colored man, the following oath shall be tendered to him: 'You do swear (or affirm) that you are of the age of twenty-one years; that for three years you have been a citizen of this state; that you have been an inhabitant of this State for one year next preceding this election, and during that time have been, and that you now are, seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and have been actually rated and paid a tax thereon, and that you have been for the last four months a resident of this county; that you have been for the last thirty days next preceding this election

Oath of a
colored
man.

TITLE 4.

a resident of this assembly district (or senate or congressional district or districts, ward, town, village or city, as the case may be, naming any or all of the foregoing districts, ward, town, village or city, from which the officer is to be chosen for whom said person offers to vote); that you are now a resident of this town (or ward, as the case may be) and of the election district in which you now offer to vote, and that you have not made any bet or wager, and are not directly or indirectly interested in any bet or wager depending upon the result of this election, and that you have not voted at this election.' "

Vote, when
to be re-
jected.

§ 19. If any person shall refuse to take the oath so tendered, his vote shall be rejected.

Oath of in-
spector, if
challenged.

§ 20. No inspector of election shall at the first election after this act takes effect, if challenged, be required in the oath administered to him to state that he is a resident of the district in which he offers to vote, if such vote is offered in the district for which he shall be appointed an inspector.

Residence.

§ 21. No person shall be deemed to have lost or acquired a residence by being a student in a college, academy, or seminary of learning; nor by living in any poor-house, alms-house, hospital or asylum in which he shall be maintained at public expense; nor by being under punishment in any prison, bridewell, or penitentiary; nor by being absent from his town or place engaged in the army or navy of the United States, or in navigating any of the waters of this state, the United States, or on the high seas; nor by being a soldier of the United States stationed at any place within this state, and without having acquired any other lawful residence.

Minutes re-
specting
person chal-
lenged, &c.,
to be kept
and filed.

§ 22. The inspectors of election shall keep a minute of their proceedings, in respect to the challenging and administering oaths to persons offering to vote, in which shall be entered by one of them the name of every person who shall have taken the oaths prescribed by this act, or either of them, specifying in each case whether the preliminary oath, or the general oath, or both, were taken; which minute and statement shall be certified by such inspectors, and returned by them to the office at which their return of votes given at such election is made, and at the same time, and shall there be filed. The inspectors shall also direct the clerks of the polls to designate by some appropriate mark, opposite to his name, every person entered on said list who shall have taken said oaths, or either of them.

Challenge
as a con-
vict.

§ 23. If the person be challenged as convicted of an infamous crime, he shall not be required to answer any questions in relation to such alleged conviction; nor shall any proof of such conviction be received, other than a duly authenticated record thereof; but if any person so convicted shall vote at any such election, unless he shall have been pardoned and restored to all the rights of a citizen, he shall be deemed guilty of a misdemeanor, and on conviction shall be imprisoned in the county jail for the term of six months.

ARTICLE THIRD.

ART. 3.

OF THE DUTIES OF THE BOARD OF INSPECTORS AND CLERKS OF THE POLL.

SEC. 24. Ballot boxes how marked.

25. Separate boxes, in certain cases.
26. To be kept locked.
27. An opening for the ballots.
28. Ballots to be deposited.
- 29 & 30. Poll lists and their contents.
31. Inspectors when to challenge.
32. To preserve order.
33. To commit disorderly persons.
34. Commitment by whom executed.

§ 24. At each annual and special election the inspectors shall provide and keep a box in which all ballots required to be endorsed "State," as directed in the ninth section of this title, shall be deposited; also a box in which all ballots which are required by said ninth section to be endorsed "Judiciary," shall be deposited; also, in the proper counties, a box in which all ballots which are required by said ninth section to be endorsed "Assembly," shall be deposited; also a box in which all ballots which are required by said ninth section to be endorsed "Senate," shall be deposited; also a box in which all ballots which are required by said ninth section to be endorsed "Congress," shall be deposited.

Ballot boxes.

§ 25. When electors of president and vice-president are to be chosen, or amendments of the constitution proposed, separate boxes shall in like manner be provided, in which shall be deposited the ballots for such electors, and on such proposed amendments.

§ 26. Each box shall be provided with a sufficient lock, and shall be locked before the opening of the poll, and the keys thereof delivered to one of the inspectors, to be appointed by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

§ 27. An opening shall be made in the lid of each box, not larger than shall be sufficient for a single closed ballot to be inserted therein at one time, through which each ballot received, proper to be placed in such box, shall be inserted.

§ 28. When the board shall have finally received the ballot of an elector, one of the inspectors, without opening the same, or permitting it to be opened or examined, shall deposit it in the box corresponding in title with the endorsement of the ballot.

Ballots deposited.

§ 29. Each clerk of the poll shall keep a poll list, which shall contain one column headed "Names of voters," and so many additional columns as there are boxes kept at the election. The heading of each additional column shall correspond with the name of one of the boxes so kept.

Poll lists.

§ 30. The name of each elector voting shall be entered by each clerk in the column of his poll list, headed "Names of voters;" and when there shall be more than one box kept,

TITLE 4.

opposite such name shall be written the figure 1, in each remaining column of such poll list, corresponding in its heading with the name of a box in which a ballot of the elector shall have been deposited.

Inspectors
to challenge

§ 31. It shall be the duty of each inspector to challenge every person offering to vote, whom he shall know or suspect not to be duly qualified as an elector.

To preserve
order.

§ 32. The board of inspectors shall possess full authority to maintain regularity and order, and to enforce obedience to their lawful commands, during an election, and during the canvass and estimate of votes, after the closing of the poll; and shall have full authority to preserve peace and good order at and around the polls of the election, and to keep the access thereto open and unobstructed; and may appoint one or more electors to communicate their orders and directions, and to assist in the performance of the duties in this section enjoined.

Id.

§ 33. If any person shall refuse to obey the lawful command of the inspectors, or by disorderly conduct in their presence or hearing shall interrupt or disturb their proceedings, they may make an order directing the sheriff, or any constable of the county, to take the person so offending into custody, and detain him until the final canvass of the votes shall be completed; but such order shall not prohibit the person so taken into custody from voting at such election.

Id.

§ 34. Such order shall be executed by any sheriff or constable, to whom the same shall be delivered; or if none shall be present, by any other person deputed by such board in writing.

ARTICLE FOURTH.

OF THE CANVASS AND ESTIMATE OF THE VOTES BY THE BOARD OF INSPECTORS.

SEC. 35. Canvass, when to be made.

36. Poll lists to be compared.

37. Ballots to be counted.

38. When found in the wrong box.

39. Excess to be destroyed.

40. Canvass and estimate of votes.

41. Excess to be destroyed.

42. Statement of result.

43. Like of presidential electors.

44. Form of statement.

45. Copy to be filed.

46. Poll lists to be filed.

47. Ballots to be destroyed.

48. Statements given to supervisor.

Canvass,
when and
how made.

§ 35. As soon as the poll of an election shall have been finally closed, the inspectors of the said election, in their several districts, shall proceed to canvass the votes. Such canvass shall be public, and shall not be adjourned or postponed until it shall have been fully completed.

§ 36. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistakes that may be found therein.

ART. 4
Comparison of poll lists.

§ 37. Each box being opened, the ballots contained therein shall be taken out and counted unopened, except so far as to ascertain that each ballot is single. And if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be destroyed, if the whole number of ballots exceed the whole number of votes, and not otherwise.

Ballots to be counted.

§ 38. No ballot properly endorsed, found in a box different from that designated by its endorsement, shall be rejected, but shall be counted in the same manner as if found in the box designated by such endorsement, provided that, by the counting of such ballot or ballots, it shall not produce an excess of votes over the number of voters, as designated on the poll lists.

§ 39. If the ballots shall be found to exceed in number the whole number of votes on the correspondent columns of the poll lists, they shall be replaced in the box, and one of the inspectors shall, without seeing the same, publicly draw out and destroy so many ballots, unopened, as shall be equal to such excess.

Excess to be destroyed.

§ 40. The board shall then proceed to canvass and estimate the votes.

Estimate of votes.

§ 41. If after having opened or canvassed the ballots, it should be found that the whole number of them exceeds the whole number of voters entered on the poll lists, the inspectors shall return all the ballots into the box, and shall thoroughly mingle the same; and one of the inspectors, to be designated by the board, shall publicly draw out of such box, without seeing the ballots contained therein, so many of such ballots as shall be equal to the excess, which shall be forthwith destroyed.

Excess to be destroyed.

§ 42. The canvass shall be completed by ascertaining how many ballots of the same kind, corresponding in respect to the names of persons thereon and the offices for which they are designated, have been received; and the result being found, the inspector shall securely attach to a statement of such canvass one ballot of each kind found to have been given for the officers to be chosen at such election, any or either of them, except those given for electors of president or vice-president; and they shall state in words at full length, immediately opposite such ballot, and written partly on such ballot and partly on the paper to which it shall be attached, the whole number of all the ballots that were received which correspond with the one so attached, so that one of each kind of the ballots received at such election for the officers then to be chosen, shall be attached to such paper, with a statement of such canvass. They shall also attach to such paper, the

Statement of result to be made.

TITLE 4.

Canvass
and state-
ment of
votes for
president
and vice-
president.

original ballots rejected by them as being defective, which were given at such election.

§ 43. When electors of president and vice-president shall be chosen at any election, the inspectors shall make a separate canvass and statement of votes given for electors, in the manner prescribed in the last preceding section, by ascertaining how many ballots of the same kind, corresponding in respect to the names thereon, have been received; and the result being found, the inspectors shall securely attach to paper one original ballot of each kind found to have been given for electors, and shall state, in words at full length opposite such ballot, and written partly thereon, and partly on the paper to which it shall be attached, the whole number of ballots for electors, that were found to have been received, corresponding with the one so attached. They shall also attach to such paper all original ballots for electors, rejected by them as being defective.

Form of
statement.

§ 44. The statements to be made by the inspectors shall contain a caption, stating the day on which, and the number of the district, the town or ward, and the county at which the election was held, in relation to which such statement shall be made; it shall also contain a statement showing the whole number of ballots taken for each person, designating the office for which they are given, which statement shall be written in words at length; and at the end thereof, a certificate that such statement is correct in all respects; which certificate shall be subscribed by the inspectors.

Copy to be
filed.

§ 45. A true copy of the several statements made by the inspectors, shall be made and certified by them, and immediately filed by them, in the office of the clerk of the town or city.

Poll lists to
be filed.

§ 46. The poll lists kept at such election shall be filed by the inspectors, or one of them, in the office of the clerk of the town or city in which such election was held, and shall be there preserved.

Ballots to
be des-
troyed.

§ 47. The remaining ballots not so pasted or attached, shall be destroyed, and the board of inspectors shall be dissolved.

Original
statements
to be deliv-
ered to su-
pervisors.

§ 48. The original statements, duly certified, shall be delivered by the inspectors, or by one of them to be deputed for that purpose, to the supervisor of the town or ward, within twenty-four hours after the same shall have been subscribed. If there be no supervisor, or he shall be disabled from attending the board of county canvassers, such original statements shall be delivered to one of the assessors of the town or ward in which such election was held.

TITLE V.**OF THE FINAL CANVASS, AND THE MODE OF DECLARING AND CERTIFYING THE RESULT.**

- ART. 1. — Of the board of county canvassers, and their proceedings.
 ART. 2. — Of the duties and proceedings of the county clerk.
 ART. 3. — Of the duties of the secretary of state, previous to the meeting of the state canvassers.
 ART. 4. — Of the formation and proceedings of the board of state canvassers.
 ART. 5. — Of the subsequent duties of the secretary of state.

ARTICLE FIRST.**OF THE BOARD OF COUNTY CANVASSERS AND THEIR PROCEEDINGS.**

- SEC. 1. Board how formed.
 2. When and where to meet.
 3. Secretary to the board.
 4. Oath to the canvassers.
 5. Quorum of the board.
 6. Estimate of votes to be made.
 7. Separate statements to be made.
 8. What to contain.
 9. Each to be certified.
 10. When to decide who is elected.
 11. Statement to be published.
 12. Absence of a canvasser.
 13 & 14. Absence of a majority.
 15. What mistakes may be corrected.

§ 1. The supervisors or assessors, to whom the original statements of the canvass of votes in the towns or wards, to which they respectively belong, shall have been delivered, shall form the county board of canvassers. Board, how composed.

§ 2. They shall meet at the office of the clerk of the county, on the Tuesday next following the election, before one o'clock in the afternoon of that day, in all the counties of this state except the county of Hamilton, which shall meet on the first Friday next following said election, and shall choose one of their number as chairman. Where and when to meet.

§ 3. The clerk of the county, or in his absence his deputy, shall be secretary of the board. Secretary.

§ 4. The chairman shall then administer the constitutional oath to each member of the board, and the same oath shall be administered to him by the secretary. Oath.

§ 5. The major part of the supervisors or assessors to whom the original statements of the canvass in the several districts in their towns or wards shall have been delivered, shall be a sufficient number to constitute a board. Quorum.

§ 6. The original statements of the canvass in each district shall then be produced, and from them the board shall proceed to estimate the votes of the county, and shall make such statements thereof as the nature of the election shall require; such statements shall then be delivered to and deposited with the county clerk. Estimate of votes to be made.

TITLE 5.
Separate
statements
to be made.

§ 7. They shall make a separate statement containing the whole number of votes given in such county for the office of governor, lieutenant-governor, judge of the court of appeals, justice of the supreme court, clerk of the court of appeals, secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor, canal commissioner, inspector of state prisons, senator in each district, and representative in congress in each district or any or either of them; the names of the persons for whom such votes were given, and the number of votes given for each; another, of the votes given for all county officers, any or either of them; another, of the votes given for member of assembly, in each assembly district; and another, of the votes for electors of president and vice-president; and another, of the votes given for any proposed amendment to the constitution.

No. of votes
and names
written at
length.

§ 8. In such statements, the whole number of votes given in each town and district, the names of the candidates, and the number of votes given to each, shall be written out in words at full length.

How certi
fied.

§ 9. Each statement shall be certified as correct, and attested by the signatures of the chairman and secretary of the board; and a copy of each, thus certified and attested, shall be delivered to the county clerk, to be recorded in his office.

Members of
assembly
and county
officers.

§ 10. Upon the statement of votes given for members of assembly and county officers, the board shall proceed to determine what person or persons have, by the greatest number of votes, been duly elected to each of the offices mentioned in each statement.

Copy to be
published.

§ 11. The board shall cause a copy of every such determination, and of the statement upon which it shall be made, to be published in one or more of the newspapers printed in the county.

If an in-
spector can
not attend
at board.

§ 12. If any one of the supervisors or assessors appointed to attend the county canvass shall be unable to attend the meeting of the board on the day appointed for such meeting, he shall, on or before that day, cause to be delivered at the office of the county clerk the original statement of the votes of his town or ward.

Duty of
those who
attend.

§ 13. If on that day a majority of the county canvassers shall not attend, or the statements of the votes from every district in the county shall not be produced, the canvassers then present shall adjourn to some convenient hour of the next day.

Ibid.

§ 14. At that hour they shall again meet, and the canvassers then attending, although less than a majority of the whole, shall organize themselves as a board, and upon the statements, or certified copies thereof, then produced, shall proceed to estimate, state and certify the votes of the county, in the manner before directed.

Statements
containing
omissions,

§ 15. If upon proceeding to canvass the votes, it shall clearly appear to the canvassers that in any statement produced to

ART. 2
&c., may be
returned to
be corrected

them, certain matters are omitted in such statement, which should have been inserted, or that any mistakes which are clerical merely exist, they shall cause the said statement to be sent by one of their number, (who they shall depute for that purpose,) to the town or ward inspectors, and town or ward canvassers of the town or ward from whom they were received, to have the same corrected; and the said canvasser so deputed shall immediately proceed and give notice to the said town or ward inspectors and canvassers, whose duty it shall be forthwith to assemble together and make such correction as the facts of the case require; but such town or ward inspectors and canvassers shall not at such meeting change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the board of county canvassers are authorized to adjourn from day to day, for the purpose of obtaining and receiving such statement, such adjournment not to extend beyond three days.

ARTICLE SECOND

OF THE DUTIES AND PROCEEDINGS OF THE COUNTY CLERK.

Sec. 16. Clerk to deliver statements.

17. To send special messengers.

18. To record the statements.

19. To prepare copies.

20. To transmit to governor, &c.

21. To deliver copies to persons elected.

22. To send list to secretary of state.

§ 16. The county clerk shall deliver to the board of county canvassers, all the certified statements of the votes taken in each town or ward at the next preceding election that shall have been received at his office.

Clerk to
deliver
statements.

§ 17. If on the day appointed for the meeting of the board of county canvassers, the board shall not have been organized, owing to a deficient return of the votes of the county, the county clerk shall by a special messenger, or otherwise, obtain necessary statements or certified copies thereof, in time to be produced to the board at their next meeting.

To procure
those not
received by
him.

§ 18. The county clerk shall record in his office all the statements and certificates, that shall have been delivered to him by the county board of canvassers, and shall keep a proper book for that purpose.

To record
statements.

§ 19. Of the statement and certificate of the votes for the office of governor, lieutenant-governor, judges of the court of appeals, justices of the supreme court, clerk for the court of appeals, secretary of state, comptroller, treasurer of the state, attorney-general, state engineer and surveyor, canal commissioners, inspectors of state prisons, senators and representatives in congress, or either of them, he shall prepare three certified copies under his signature, and sealed with his seal of office.

To prepare
three copies

TITLE 5.
To transmit
the same to
governor,
secretary
and Comp-
troller.

§ 20. Within five days after the adjournment of the board of county canvassers, the county clerk shall deposit in the nearest post-office, directed to the governor, to the secretary of state, and to the comptroller, each, one of the certified copies of the statement and certificates of votes, so prepared by him.

To deliver
copy of cer-
tificate to
county offi-
cers.

§ 21. He shall prepare as many certified copies of each certificate of the determination of the board of county canvassers, as there are persons declared to be elected in such certificate, and shall, without delay, deliver one of such copies to each person so elected.

List to be
sent to sec-
retary of
state.

§ 22. He shall transmit to the secretary of state, within twenty days after a general election, and within ten days after a special election, a list of the names of the persons elected in the county as members of assembly, and also a list of the names of all persons elected to any county office at such election, with the places of their residence respectively.

ARTICLE THIRD.

OF THE DUTIES OF THE SECRETARY OF STATE PREVIOUS TO THE MEETING OF THE STATE CANVASSERS.

SEC. 23. Secretary to file statements.

24. When to send special messengers.

25. Duty of county clerk thereon.

26. Duty of messengers.

27. Meeting of state canvassers.

28. Notice to mayor, &c., of Albany.

Certified
statements
to be filed
by secre-
tary.

§ 23. It shall be the duty of the secretary of state to file in his office, the certified statements received by him from a county clerk; and to obtain from the governor and comptroller, every such certified statement received by either of them, and to file the same in his office.

To send
special
messengers
to county
clerks.

§ 24. If from any county from which such statement shall be due, none shall have been received or obtained by him, on or before the last day of November next after a general election, and within twenty days after a special election, he shall dispatch a special messenger to obtain such statement from the clerk of such county.

Duty of
clerks.

§ 25. Such clerk shall immediately, on the demand of such messenger, made at his office, make out and deliver to such messenger the statements required.

Duty of
messengers

§ 26. The messenger shall deliver to the secretary of state, as soon as may be, all such statements as he shall receive, to be filed and recorded as aforesaid.

Secretary to
notify state
canvassers.

§ 27. The secretary of state shall appoint a meeting of the state canvassers to be held at his office, or that of the treasurer or comptroller, on or before the fifteenth day of December after each general election, and within forty days after a special election.

Secretary to
notify state
canvassers.

§ 28. If a majority of those officers shall be unable or shall fail to attend on the day appointed, he shall give notice to

the mayor and recorder of the city of Albany, that their attendance is required.

ARTICLE FOURTH.

OF THE FORMATION AND PROCEEDINGS OF THE BOARD OF STATE CANVASSERS.

SEC. 29. Board of state canvassers.

30. When mayor, &c., of Albany to be part.

31. Board how to proceed.

32. To determine and declare result.

33. To make certificate thereof.

34. Dissent of a canvasser.

35. Protest of a canvasser.

36. Dissent and protest to be filed.

37. Board may adjourn from day to day.

§ 29. The secretary of state, comptroller, surveyor-general, attorney-general and treasurer, shall be the state canvassers; three of whom shall be a sufficient number to form a board. After the present year the state engineer and surveyor shall be one of the state canvassers in the place of the surveyor-general.*

Board, how composed.

§ 30. If a majority of those officers shall be unable, or shall fail to attend, the mayor and recorder of the city of Albany, being notified by the secretary of state, shall attend without delay, and, with the officers attending shall form the board.

§ 31. The board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for the office of governor and lieutenant-governor, or either of them; another statement, of the votes given for the office of senator; and another, of the votes given for representative in congress; another, of the votes for judges of the court of appeals; another, of the votes for justices of the supreme court; another, of the votes for the clerk for the court of appeals; another, of the votes for secretary of state; another, of the votes for comptroller; another, of the votes for state treasurer; another, of the votes for attorney-general; another, of the votes for state engineer and surveyor; another, of the votes for canal commissioners; and another, of the votes for inspectors of state prisons; each of which statements shall show the names of the persons to whom such votes shall have been given for either of the said offices, and the whole number of votes given to each; distinguishing the several districts and counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

How to proceed.

§ 32. Upon such statements they shall then proceed to determine and declare what persons have been by the greatest number of votes duly elected to such offices, or either of them.

To determine and declare persons elected

* The last paragraph added by Laws of 1847, ch. 240.

**TITLE &
To sub-
scribe cer-
tificates.**

§ 33. They shall make and subscribe on the proper statement, a certificate of such determination, and shall deliver the same to the secretary of state.

Dissents.

§ 34. If any one of the canvassers shall dissent from a decision of the board, he shall state at large, in writing, the reasons of such dissent.

Protests.

§ 35. If any of the acts or proceedings of the board shall appear to any one of the canvassers to be illegal or irregular, such canvasser shall protest against the same in writing, setting forth distinctly the grounds of his protest.

Id.

§ 36. The canvasser so dissenting or protesting, shall deliver his dissent or protest, signed with his proper name, to the secretary of state, who shall file the same in his office.

**Adjourn-
ments.**

§ 37. The board shall have power to adjourn from day to day, for a term not exceeding five days.

ARTICLE FIFTH.

OF THE SUBSEQUENT DUTIES OF THE SECRETARY OF STATE.

Sec. 38. Statements to be recorded.

39. Copies to be sent.

40. And to be published.

41. Certificate to members of congress.

42. In case of a vacancy.

43. Names of county officers to be recorded.

**To record
proceed-
ings of
state can-
vassers.**

§ 38. He shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the board of state canvassers, and every dissent or protest that shall have been delivered to him by a canvasser.

**To transmit
copy to each
person
elected.**

§ 39. He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

**To publish
copy.**

§ 40. He shall cause a copy of such certified statements and determinations to be printed in one or more of the public newspapers in each senate district, if any shall be published therein.

**General cer-
tificate of
members of
Congress.**

§ 41. He shall prepare a general certificate under the seal of this state, and attested by him as secretary thereof, addressed to the house of representatives of the United States, in that congress for which any person shall have been chosen, of the due election of the persons so chosen at each election, as representatives of this state in congress; and shall transmit the same to the said house of representatives, at their first meeting.

**Of members
to supply
vacancies.**

§ 42. If either of the persons so chosen at such election shall have been elected to supply a vacancy in the office of representative in congress, it shall be mentioned by the secretary in the statements and certificates to be prepared by him.

§ 43. The secretary of state shall enter in a book, to be kept in his office, the names of the respective county officers elected in this state, specifying the counties for which they were severally elected and their place of residence, the office to which they were respectively elected, and their term of office.

ART. 2.
To record
names of
county offi-
cers elected.

TITLE VI.

OF THE ELECTION OF REPRESENTATIVES IN CONGRESS, ELECTORS OF PRESIDENT AND VICE-PRESIDENT, AND SENATORS IN CONGRESS.

ART. 1.—Of the election of representatives in congress.

ART. 2.—Of the election of electors of president and vice-president.

ART. 3.—Of the formation and proceedings of the college of electors.

ART. 4.—Of the election of senators in congress.

ARTICLE FIRST.

OF THE ELECTION OF REPRESENTATIVES IN CONGRESS.

SEC. 1. Members of congress when to be chosen.

2. Vacancy in that office.

§ 1. Representatives in the house of representatives of the congress of the United States shall be chosen in the several congress districts, at the general elections held therein, in every second year, after the year one thousand eight hundred and twenty-six.

When
chosen.

§ 2. If a representative in congress shall resign, he shall forthwith transmit a notice of his resignation to the secretary of state; and if a vacancy shall occur by death or otherwise in the office of a representative in congress, the clerk of the county in which such representative shall have resided at the time of his election, shall, without delay, transmit a notice of such vacancy to the secretary of state.

Resigna-
tion or
death.

ARTICLE SECOND.

OF THE ELECTION OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

SEC. 3. Election by general ticket.

4. County clerk to make certificates.

5. Certificates how disposed of.

6. Messengers to carry statements.

7. Clerk to deliver same to messengers.

8 to 13. Duty of messengers.

14. Duty of state canvassers.

15. To determine who are elected.

16. Each elector to be notified.

17. The determination to be published.

18. Penalty for destroying certificates.

19. Penalty for neglect or corruption.

20. Pay of messengers.

§ 3. At the general election in November, preceding the time fixed by the law of the United States for the choice of

Election by
general
ticket.

TITLE 4

president and vice-president of the United States, there shall be elected, by general ticket, as many electors of president and vice-president as this state shall be entitled to appoint; and each elector in this state shall have a right to vote for the whole number; and the several persons to the number required to be chosen, having the highest number of votes, shall be declared and deemed duly appointed electors.

Duty of
county
clerks.

§ 4. The county clerk of each county shall make three certified copies of the statement of votes given for electors in his county, immediately after recording the same, and forthwith transmit, by mail, one of such certified copies to the governor, another to the secretary of state, and deliver the other as hereinafter directed.

Ibid.

§ 5. One of the certified copies of such statement of votes given in each of the several counties herein named, shall be delivered by the clerks of such counties respectively, as herein directed, on the day next succeeding that on which the canvass shall have been made, to wit: Those of the counties of Niagara, Wyoming and Orleans, to the clerk of Genesee; those of the counties of Livingston, Monroe, Wayne and Yates, to the clerk of Ontario; that of the county of Seneca, to the clerk of Cayuga; those of the counties of Cortland and Oswego, to the clerk of Onondaga; that of the county of Madison, to the clerk of Oneida; those of the counties of Montgomery, Fulton and Saratoga, to the clerk of Schenectady; that of Chenango, to the clerk of Broome; those of the counties of Rockland, Orange, Ulster and Sullivan, to the clerk of Greene; that of the county of Richmond, to the clerk of New York; and those of the counties of Otsego, Schoharie, Rensselaer and Albany, to the secretary of state.

Messen-
gers.

§ 6. The clerks of the several counties of Franklin, St. Lawrence, Chautauque, Cattaraugus, Tompkins and Suffolk, immediately after recording the electoral votes received by them, shall appoint a messenger to receive and carry the certified copies of the statements of votes given for electors, as herein directed; which appointment shall be made by the said clerks, under their seal of office.

To receive
copy from
county
clerks.

§ 7. Each clerk of a county having received the certified copies of the statements of the electoral votes given in any other county, shall deliver the same to the messenger authorized to receive the certified statements of the electoral votes given in his county, and shall deliver the said last mentioned statements to the messenger authorized to receive the same when demanded.

Messenger
in St. Law-
rence co.

§ 8. The messenger appointed in the county of St. Lawrence shall, immediately after his appointment, receive the certified statements of the electoral votes of said county, and forthwith proceed to the offices of the clerks of the counties of Jefferson and Lewis, and receive the certified statements of the electoral votes of those counties; and within three days after his

appointment, deliver the copies by him received to the clerk of Oneida county.

In Cattaraugus county.

§ 9. The messenger appointed in the county of Cattaraugus shall, immediately after his appointment, receive the certified statements of the electoral votes of that county, and forthwith proceed to the clerk's offices of the counties of Allegany and Steuben, and receive the certified statements of the electoral votes of those counties; and within fifty-six hours after his appointment, deliver the certified statements by him received to the clerk of Ontario county.

In Chautauque county.

§ 10. The messenger appointed in the county of Chautauque shall, immediately after his appointment, receive the certified statements of the electoral votes of that county, and forthwith proceed with all reasonable diligence to the offices of the clerks of the counties of Erie, Genesee, Ontario, Cayuga, Onondaga, Oneida, Herkimer and Schenectady, and receive from the several clerks the certified statements of electoral votes in those counties respectively; and such others as shall have been delivered to such clerks, as herein provided, and deliver the same to the secretary of state.

In Franklin county.

§ 11. The messenger appointed in the county of Franklin shall, immediately after his appointment, receive the certified statements of the electoral votes of that county, and forthwith proceed with all reasonable diligence to the offices of the clerks of the counties of Clinton, Essex, Warren and Washington, and receive from the several clerks the certified statements of electoral votes in those counties respectively, and deliver the same to the secretary of state.

§ 12. The messenger appointed in the county of Tompkins shall, immediately after his appointment, receive the certified statements of the electoral votes of that county, and forthwith proceed with all reasonable diligence to the offices of the clerks of the counties of Chemung, Tioga, Broome, Delaware and Greene, and receive from the several clerks the certified statements of electoral votes in those counties respectively, and such others as shall have been delivered to such clerks, as herein provided, and deliver the same to the secretary of state.

In Tompkins county.

§ 13. The messenger appointed in the county of Suffolk shall, immediately after his appointment, receive the certified statements of the electoral votes of that county, and forthwith proceed with all reasonable diligence to the offices of the clerks of the counties of Queens, Kings, New-York, Westchester, Putnam, Dutchess and Columbia, and receive from the several clerks the certified statements of electoral votes in those counties respectively, and such others as shall have been delivered to such clerks, as herein provided, and deliver the same to the secretary of state.

In Suffolk county.

§ 14. The board of state canvassers shall meet at the office of the secretary of state, on the Wednesday next after the third Monday of November, after every such election, or sooner, if all the certified copies of the statements of the

Duty of state canvassers.

TITLE 4.

county canvassers shall have been received from all the counties, to canvass the votes given for the electors of president and vice-president; and in case all the certified statements shall not have been received on that day, the board may adjourn from day to day until the same shall have been received, not exceeding five days; and if at the expiration of four days, certified copies of the statements of the county canvassers shall not have been received from any county, the board shall proceed to canvass upon such of the said statements as shall have been received.

Statement of votes.

§ 15. The board of state canvassers shall proceed in making a statement of all the votes, and determining and certifying the persons elected, in the manner prescribed by law in relation to the election of State officers.

Duty of secretary of state.

§ 16. The secretary of state shall, without delay, cause a copy, under the seal of his office, of the certified determination of the board of state canvassers to be delivered to each of the persons therein declared to be elected; and for that purpose he may employ such and so many messengers as he shall deem necessary.

Publication.

§ 17. The determination and certificate of the board of state canvassers in relation to the choice of electors shall be published in the same manner as provided by law in relation to the certificates of the election of state officers.

Penalty for destroying certificate, &c.

§ 18. If any of the messengers shall be guilty of destroying the certificates intrusted to their care, or willfully doing any act that shall defeat the due delivery of them as directed by this act, he shall be punished by imprisonment in the state prison, at hard labor, for a term not less than three nor exceeding five years; and if any person shall be found guilty of taking away from any of the said messengers, either by force or in any other manner, any such certificates intrusted to his care, or of willfully doing any act that shall defeat the due delivery thereof, as directed by this act, he shall be punished by imprisonment in the state prison, at hard labor, for not less than two nor exceeding four years.

For willful neglect or corrupt conduct.

§ 19. If any officer or messenger, on whom any duty is enjoined in this act, shall be guilty of any willful neglect of such duty, or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding one year.

Pay of messengers.

§ 20. The messengers employed or appointed under this act, shall receive for their compensation twelve cents per mile for traveling, to be audited by the comptroller upon the certificate of the secretary of state.

ARTICLE THIRD.

OF THE FORMATION AND PROCEEDINGS OF THE COLLEGES OF ELECTORS

SEC. 21. Meeting of electors.

22. Officers to be appointed.

- SEC. 23. Lists of electors to be prepared.
 24. Electors how to vote.
 25. Lists of their votes to be made.
 26. Messenger to be appointed.
 27. To whom he is to deliver the lists.
 28. Two other lists how disposed of.
 29. Pay of electors.

§ 21. The electors of president and vice-president shall convene at the capitol on the day preceding the first Wednesday in December after their election, and those of them who shall be so assembled at four o'clock in the afternoon of that day, shall immediately after that hour proceed to fill, by ballot and by plurality of votes, all vacancies in the electoral college, occasioned by the death, refusal to serve, or neglect to attend at that hour, of any elector, or occasioned by an equal number of votes having been given for two or more candidates.

Meeting
and duty of
electors.

§ 22. The electoral college being thus completed, they shall then choose a president and secretary from their own body.

President
and secre-
tary.

§ 23. The secretary of state shall prepare three lists of the names of the electors; procure to the same the signature of the governor; affix thereto the seal of the state; and deliver them, thus signed and sealed, to the president of the college of electors, on or before the said first Wednesday in December.

List of elec-
tors.

§ 24. On the said first Wednesday in December, the electors shall meet at the capitol, and then and there vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves. They shall name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice-president.

When and
how to vote.

§ 25. They shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and after annexing thereto one of the lists received from the secretary of state; they shall seal up the same, certifying thereon that lists of the votes of this state for president and vice-president are contained therein.

List of
votes.

§ 26. The electors shall then, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of the lists so sealed up, and to deliver the same to the president of the senate at the seat of government of the United States, before the first Wednesday in January then next ensuing.

Messenger.

§ 27. In case there shall be no president of the senate at the seat of government on the arrival of the person intrusted with the lists of the votes of the electors, then such person is required to deliver the lists of votes in his custody into the office of the secretary of state of the United States.

His duty.

§ 28. The electors are also required to forward forthwith, by the post-office, to the president of the senate of the United States, at the seat of government, and to deliver forthwith to the judge of the United States for the northern district of the

Two other
lists.

TITLE 7.

Pay of electors.

state of New York, similar lists, signed, annexed, sealed up, and certified in the manner aforesaid.

§ 29. Every elector of this state for the election of a president and vice-president of the United States, who shall attend at any election of those officers, and give his vote at the time and place appointed by law, shall be entitled to receive for his attendance at such election, and for traveling to and from his place of residence by the most usual route, the same sum as shall at the time be allowed by law to members of the legislature for their attendance and travel, to be paid in like manner.

ARTICLE FOURTH.

OF THE ELECTION OF SENATORS IN CONGRESS.

SEC. 30. Time of choosing U. S. senator.

31. Vacancy when to be filled.

32. How election to be conducted.

33. Evidence of the election.

When chosen.

§ 30. On the first Tuesday of February next before the expiration of the time for which any senator was elected to represent this state in congress, if the legislature shall be then in session, and if not, then within ten days after a quorum of both houses shall be assembled at the then next meeting of the legislature, an election shall be held for a senator in congress, at the place where the legislature shall be then sitting, in the room of such senator so going out of office.

Vacancy.

§ 31. Whenever the seat of any such senator shall become vacant before the expiration of the time for which he was elected, another senator shall be elected in his room within ten days after the legislature shall have notice of such vacancy, at the place where it shall be then sitting.

How chosen.

§ 32. Such election shall be made by the legislature in the following manner: The senate and assembly shall each openly nominate one person for the office of senator in congress; after which they shall immediately meet, and if they shall agree in their nominations, the person so nominated shall be appointed to the office for which he shall be nominated; if they shall disagree, the election shall be made by the joint ballot of the senators and members of assembly.

Evidence of election.

§ 33. Whenever any senator shall be chosen as aforesaid, copies of the resolutions of the senate and assembly, testifying such choice, signed by the president of the senate and speaker of the assembly, shall be thereupon delivered to the person so chosen a senator, as evidence of such election.

TITLE VII.

PENALTY FOR VIOLATING THE PROVISIONS OF THIS CHAPTER,
AND FOR MISCONDUCT AT ELECTIONS.

SEC. 1. False swearing when challenged.

2. Procuring any one to swear false.

3. Neglect of duty or corruption.

SEC. 4. Bribery, &c., of voter.

5. Militia not to be called out.
6. Acts prohibited to candidates.
7. Deceiving an elector or changing his ballot.
8. Punishment of these offences.
9. Disobeying orders of inspectors.
10. Voting more than once, &c.
11. Procuring illegal votes.
12. Procuring a change of residence.
13. Punishment for illegal voting.
14. Notice of offence to be given, &c.
15. Grand juries to be charged.

§ 1. If any elector challenged as unqualified, shall be guilty of willful and corrupt false swearing or affirming, in taking any oath or affirmation prescribed by this chapter, such person shall be adjudged guilty of willful and corrupt perjury. False swearing.

§ 2. Every person who shall willfully and corruptly procure any person to swear or affirm falsely as aforesaid, shall be adjudged guilty of subornation of perjury, and shall, upon conviction thereof, suffer the punishment directed by the law in cases of willful and corrupt perjury. Procuring it.

§ 3. If any officer on whom any duty is enjoined in this chapter, or in any statute relating to elections shall be guilty of any willful neglect of such duty, or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment; the fine in no case to exceed the sum of five hundred dollars, nor the imprisonment the term of one year. Neglect of duty.

§ 4. If any person shall by bribery, menace or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this state in giving his vote or ballot, or deter him from giving the same, or disturb or hinder him in the free exercise of the right of suffrage, at any election within this State, held pursuant to this chapter, and shall thereof be convicted, such person so offending and convicted shall be adjudged guilty of a misdemeanor, and be fined or imprisoned, according to the discretion of the court before which such conviction shall be had; such fine in no case to exceed five hundred dollars, nor such imprisonment one year. Bribery, &c.

§ 5. If any officer or other person shall call out or order any of the militia of this state, to appear and exercise on any day during any election to be held by virtue of this chapter, or within five days previous thereto, except in cases of invasion or insurrection, he shall forfeit the sum of five hundred dollars for every such offence. Calling out militia prohibited.

§ 6. It shall not be lawful for any candidate for any elective office, with intent to promote his election, or for any other person, with intent to promote the election of any such candidate, either, Prohibition.

1. To provide or furnish entertainment at his expense, to Against en-

TITLE 7.
tertains.

1b.

**Procuring
of voters.**

Contributing money.

**Except for
printing,
&c.**

**Changing
votes.**

**Punish-
ment.**

**Penalty for
disobeying
inspectors,
&c.**

**Penalty for
non-resi-
dents vo-
ting, and for
voting more
than once.**

Repeal.

**Procuring
illegal
voters.**

any meeting of electors, previous to, or during the election at which he shall be a candidate ; or,

2. To pay for, procure, or engage to pay for any such entertainment ; or,

3. To furnish any money or other property to any person, for the purpose of being expended in procuring the attendance of voters at the polls ; or,

4. To engage to pay any money, or deliver any property, or otherwise compensate any person for procuring the attendance of voters at the polls ; or,

5. To contribute money for any other purpose intended to promote an election of any particular person or ticket, except for defraying the expenses of printing, and the circulation of votes, handbills and other papers previous to any such election, or for conveying sick, poor or infirm electors to the polls.

§ 7. No person shall fraudulently or deceitfully change or alter a ballot of any elector, nor shall furnish an elector any ballot containing more than the proper number of names, or cause any other deceit to be practiced with intent fraudulently to induce such elector to deposit the same as his vote, and thereby to have the same thrown out and not counted.

§ 8. Every person offending against the provisions of this act shall be deemed guilty of a misdemeanor, punishable by fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding six months.

§ 9. If any person shall willfully disobey any lawful commands of the board of inspectors of any election, or shall willfully and without lawful authority, obstruct, hinder or delay any elector on his way to any poll where an election shall be held, or while he is exercising or attempting to exercise the right of voting, or shall aid or assist in such obstruction or delay, he shall, on conviction, be adjudged guilty of a misdemeanor, and be fined in a sum not exceeding two hundred and fifty dollars, and may be imprisoned, in the discretion of the court, for not more than six months.

§ 10. Any person who at any general or special election, or city or charter election, shall knowingly vote or offer to vote in any election district in which he does not reside, except as hereinbefore provided, or who shall vote or offer to vote more than once at the same election, either in the same or in any other election district, shall, on conviction, be adjudged guilty of a misdemeanor, and punishable by fine not exceeding two hundred dollars, or by imprisonment not exceeding six months, or by both, as the court may direct ; and section nineteen of title six, chapter one, of the fourth part of the Revised Statutes is hereby repealed.

§ 11. Every person who shall procure, aid, assist, counsel or advise another to give or offer his vote at any general, town, city or charter election, knowing that the person is not duly qualified to vote at the place where the vote is given or offered, shall on conviction, be adjudged guilty of a misdemeanor, and

punishable as prescribed in the last preceding section of this title.

§ 12. Every person who shall procure, aid, assist, counsel or advise another to go or come into any town, ward or election district, for the purpose of giving his vote at any general, special, town or city election, knowing that the person is not duly qualified to vote in such town, or ward, or election district, shall, on conviction, be deemed guilty of a misdemeanor, and punishable as prescribed by the tenth section of this title.

Procuring non-residents to come into a town, ward or district to vote.

§ 13. Any person not duly qualified to vote under the laws of this state, who shall knowingly vote or offer to vote at any general, or special, town, or charter election in this state, shall be adjudged guilty of a misdemeanor, and on conviction shall be imprisoned for a period not exceeding six months, at the discretion of the court before which the offence is tried. And any inhabitant of another state, or country, who shall vote or offer to vote at any general, special, town, or city charter election in this state, shall be adjudged guilty of a felony, and on conviction, shall be imprisoned in the state prison, for a period not exceeding one year, at the discretion of the court before which the offence is tried. And it shall be the duty of the district attorney in the county where the offence shall have been committed, to adopt effectual measures for the punishment of all persons, who, without being legally qualified, shall vote or attempt to vote at any election in this state.

Punishment.

An inhabitant of another state or country.

§ 14. It shall be the duty of every inspector of elections, sheriffs, constables and justices of the peace within this state, knowing that an offence has been committed, under this act, or having good reason to believe that an offence has been committed, to give information thereof to the district attorney of the county in which the offence shall have been committed, whose duty it shall be to adopt effectual measures for the punishment of all persons violating the provisions of this act.

Inspectors of election, &c., to give notice of offences under this act.

§ 15. It shall be the duty of the presiding judge of every court of general sessions of the peace or oyer and terminer within this state, specially to charge the grand jury at each term of said court, to take notice of all offences committed in violation of any of the provisions of this act.

Grand juries to be specially charged.

TITLE VIII.

MISCELLANEOUS PROVISIONS.

- Sec. 1. Hamilton county a part of Fulton.
2. Majority of inspectors may act.
 3. Vacancies among them how filled.
 4. To take the oath of office.
 5. Notices when sent to clerk or judge.
 6. Pay of county clerks.
 7. Pay of clerks of the polls.
 8. Repealing clause.
 9. Sections to apply to town elections.
 10. Secretary of state to publish act.

TITLE 8.

- SEC. 11.** Act when to take effect.
 15. Certain persons not to vote.
 16. Penalty on inspectors.
 17. Voters to be interrogated.

**Hamilton
county.**

§ 1. The county of Hamilton and the county of Fulton shall jointly elect one member of assembly; and for all the purposes of this act, the county of Hamilton shall be deemed part of the county of Fulton.

Inspectors.

§ 2. It shall be lawful for a majority of the inspectors of any election, held in pursuance of this chapter, to execute all the trusts and duties required to be executed by the inspectors of any such election.

Ib.

§ 3. If a majority shall not be present on any day on which an election is held, the inspectors or inspector attending, shall appoint so many electors of the town, ward or district, to act as inspectors, as may be necessary to form a board.

Ib.

§ 4. The persons so appointed shall take the constitutional oath, and continue to act until a majority of the inspectors shall attend.

**Notice to
clerk and
first judge.**

§ 5. No notice of an election, nor copy of the governor's proclamation shall in any case be directed to the clerk of a county, unless the office of sheriff of such county shall then be vacant, nor to the first judge, unless the office of sheriff and clerk shall both be vacant.

Accounts.

§ 6. The accounts of the respective clerks of counties for services performed, and expenses incurred by virtue of this chapter, shall be audited, levied and paid in like manner as other contingent charges of such counties.

**Pay of
clerks of
the poll.**

§ 7. The clerks of the polls shall severally be allowed one dollar and twenty-five cents per day for their services under this act.

Repeal.

§ 8. Chapter six of the first part of the Revised Statutes; the act entitled "An act directing the manner of choosing electors of president and vice-president," passed April 15, 1829; the act entitled, "An act to preserve the purity of elections," passed May 5, 1829; and the eleventh, twelfth, thirteenth, fourteenth and seventeenth sections of the act entitled "An act to preserve the purity of elections," passed May 7, 1839; "An act concerning elections in cities other than New-York," passed May 26, 1841, and all other acts, and parts of acts inconsistent with the provisions of this act are hereby repealed; but such repeal shall not affect any act done or right accrued, or any proceeding, suit or prosecution for any offence, or for the recovery of any penalty or forfeiture.

**Sections
applicable.**

§ 9. Sections seven, eight, nine and ten, of the act entitled "An act to preserve the purity of elections," passed May 7, 1839, shall be deemed applicable to elections for town officers only.

**This act to
be pub-
lished in
pamphlet
form.**

§ 10. The secretary of state shall cause this act to be published in pamphlet form, and he shall cause such number of copies thereof, with the necessary forms and instructions, as

shall be sufficient to supply the several officers upon whom the duty is devolved by this act, and shall cause the same to be distributed to such officers at the expense of the state.

§ 11. This act shall take effect on the first day of June next.

When to
take effect.

[The following sections, being parts of ch. 240 of the Laws of 1847, are inserted here for the same reason that the act of 1842, as amended by that of 1847, is inserted.]

§ 15. No person shall be permitted to vote at any election, who previous thereto shall have been convicted of bribery or of any infamous crime, unless he shall have been pardoned and restored to all the rights of a citizen, or who shall make any bet or wager, or be directly or indirectly interested in any bet or wager depending upon the result of any election at which such person may offer to vote.

Certain
persons not
to vote.

§ 16. In case any inspector of election shall knowingly and wilfully permit or suffer any person to vote at any election who is not entitled to vote thereat, the said inspector so offending shall, on conviction thereof, be adjudged guilty of a misdemeanor, and shall be sentenced to pay a fine of five hundred dollars, and be imprisoned in the county jail for six months.

Penalty on
inspectors.

§ 17. The inspectors of any election in addition to the other questions to be put to any person offering to vote when challenged under the act of the legislature of this state passed April 5, 1842, entitled "An act respecting elections for other than militia and town officers," shall interrogate every such person as to his qualifications to vote under the present constitution.

Electors to
be ques-
tioned.

CHAP. VII.

[150]

Of the Legislature.

(Took effect January 1, 1880.)

TITLE 1.—Of the apportionment of the members of the legislature.

TITLE 2.—Of the powers, duties and privileges of the two houses, and their members and officers.

TITLE 3.—Of applications to the legislature.

TITLE 4.—Of the enactment and promulgation of statutes, and of the time from which they take effect.

TITLE 5.—Of the mode of taking testimony in certain legislative proceedings.

TITLE 6.—Of the compensation of the members of the legislature, and their officers, and the contingent expenses of the senate and assembly.

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TITLE I.

OF THE APPORTIONMENT OF THE MEMBERS OF THE LEGISLATURE.

SEC. 1. Four senators to each district; one to be chosen annually.

2. Apportionment of the members of assembly.

3. Rule by which new apportionments are to be made.

TITLE 1.

SEC. 4. When new apportionments to be made.

5. Every county to have at least one member.

6. No change to be made of a county that shall deprive it of a member.

7. Population required for a new county.

Senators.

SECTION 1. Each of the senate districts must be represented by four senators, and one senator must be elected annually in each district.

Members of assembly.

§ 2. The members of the assembly must be chosen by counties; and the members of assembly hereafter to be chosen in the several counties of this state, until a new apportionment shall be made, shall be as follows:

In the county of Suffolk, two;

In the county of Queens, one;

In the county of Kings, one;

In the county of Richmond, one;

In the city and county of New-York, eleven;

In the county of Westchester, three;

In the county of Putnam, one;

In the county of Dutchess, four;

In the county of Rockland, one;

In the county of Orange, three;

In the county of Ulster, two;

In the county of Sullivan, one;

In the county of Greene, two;

In the county of Columbia, three;

In the county of Albany, three;

In the county of Rensselaer, four;

In the county of Schoharie, two;

In the county of Schenectady, one;

In the county of Saratoga, three;

In the county of Montgomery, including the county of

[152] Hamilton as a part of said county of Montgomery, three;

In the county of Washington, three;

In the county of Warren, one;

In the county of Essex, one;

In the county of Clinton, one;

In the county of Franklin, one;

In the county of St. Lawrence, two;

In the county of Herkimer, three;

In the county of Oneida, five;

In the county of Madison, three,

In the county of Oswego, one;

In the county of Lewis, one;

In the county of Jefferson, three;

In the county of Delaware, two;

In the county of Otsego, four;

In the county of Chenango, three;

In the county of Broome, one;

In the county of Cortland, two;

In the county of Tompkins, three;

In the county of Tioga, two;

In the county of Onondaga, four;
 In the county of Cayuga, four;
 In the county of Seneca, two;
 In the county of Ontario, three;
 In the county of Wayne, two;
 In the county of Yates, one;
 In the county of Steuben, two;
 In the county of Livingston, two;
 In the county of Monroe, three;
 In the county of Genesee, three;
 In the county of Orleans, one;
 In the county of Niagara, one;
 In the county of Erie, two;
 In the county of Allegany, one;
 In the county of Cattaraugus, one;
 In the county of Chautauque, two.

§ 3. In every new apportionment to be hereafter made of the members of assembly, they must be apportioned among the several counties of the state, as nearly as may be, according to the numbers of their respective inhabitants, excluding aliens, paupers, and persons of colour not taxed.

Future ap-
portion-
ments of
assembly.

§ 4. Such an apportionment must be made by the legislature, at its first session after the return of every enumeration of the inhabitants of the state, made in pursuance of the constitution.

When to be
made.

§ 5. Every county established and separately organized before the tenth day of November, in the year one thousand eight hundred and twenty-one, and then being one of the counties of the state, must always be represented by at least one member of the assembly.

One mem-
ber to each
county.

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§ 6. No change can be made, that shall have the effect of reducing the number of the inhabitants of any such county, according to the last state census, below the number required to entitle it to a member of the assembly, according to the existing ratio of representation.

Change in:
county.

§ 7. No new county can be erected, unless its population, according to the return of the last state census, shall entitle it to a member.

New county

TITLE II.

OF THE POWERS, DUTIES AND PRIVILEGES, OF THE TWO HOUSES, AND THEIR MEMBERS AND OFFICERS.

SEC. 1. Legislature when to assemble.

2. Powers of each house.

3. Journal to be kept.

4. Doors to be kept open.

5. Adjournments.

6. Members privileged from arrest on civil process.

7. Privileged in like manner before session, and while going and returning.

8. Further privilege after adjournment.

9. Privilege while absent with leave.

10. Officers in actual attendance privileged from arrest.

TITLE 2.

- SEC. 11. Members not to be questioned in any other place, for any speech in the house.
 12. Each house has power to expel members, and to punish members and officers.
 13. Each house has power to punish a breach of its privileges.
 14. Imprisonment when ordered by either house, shall not extend beyond same session.
 15. Assembly has power of impeaching all civil officers.
 16. Clerks of senate and assembly to give bonds.
 17. Clerks to prepare indexes to journals, and to furnish to secretary of state copies of concurrent resolutions.

Time of meeting.

§ 1. The legislature shall assemble at the capitol, in the city of Albany, on the first Tuesday of January, in every year.

7 B., 421.

Quorum, &c.

§ 2. A majority of each house constitutes a quorum to do business. Each house determines the rules of its own proceedings, and is the judge of the qualifications of its own members.

Journals.

§ 3. Each house is required to keep a journal of its proceedings, and to publish the same, except such parts, as may in its judgment, require secrecy.

Sittings public.

§ 4. The doors of each house are to be kept open, except when the public welfare shall require secrecy.

Adjournments.

§ 5. Neither house can, without the consent of the other, adjourn for more than two days.

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Privilege from arrest.

§ 6. Every member of the legislature shall be privileged from arrest on civil process, during his attendance at the session of the house to which he shall belong, except on process issued in any suit, brought against him for any forfeiture, misdemeanor, or breach of trust, in any office or place of public trust held by him.

1 R. L., 122, §§ 1, 3.

Ib.

§ 7. Each member shall enjoy the like privilege for the space of fourteen days previous to any such session, and also while going to or returning from such session, provided the time of such going or returning do not exceed fourteen days.

1 R. L., 122, §§ 1, 3.

Ib.

§ 8. Each member shall enjoy the like privilege after any adjournment of the legislature, until its next meeting, when such adjournment shall not exceed fourteen days.

1 R. L., 122, §§ 1, 3.

Ib.

§ 9. Each member shall enjoy the like privilege, while absent with leave of the house to which he shall belong.

Ib., officers.

§ 10. No officer of either house, whilst in actual attendance upon the house, shall be liable to arrest on civil process.

Freedom of debate,

§ 11. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

1 R. L., 48, § 11.

Punishment of members, &c.

§ 12. Each house has the power to expel any of its members, and to punish its members and officers for disorderly behaviour, by imprisonment; but no member shall be expelled until the report of a committee, appointed to inquire into the

facts alleged as the ground of his expulsion, shall have been made.

§ 13. Each house has the power to punish as a contempt, and by imprisonment, a breach of its privileges, or of the privileges of its members; but such power shall not hereafter be exercised, except against persons guilty of one or more of the following offences:

Breach of
privileges,
when pun-
ishable.

1. The offence of arresting a member or officer of the house, in violation of his privilege from arrest, as herein before declared;

2. That of disorderly conduct in the immediate view and presence of the house, and directly tending to interrupt its proceedings;

3. That of publishing any false and malicious report of the proceedings of the house, or of the conduct of a member in his legislative capacity;

4. That of refusing to attend, or be examined as a witness, either before the house, or a committee, or before any person authorised by the house, or by a committee, to take testimony in legislative proceedings;

5. That of giving or offering a bribe to a member, or of attempting by menace, or any other corrupt means or device, directly or indirectly to control or influence a member in giving his vote, or to prevent him from giving the same.

§ 14. In all cases in which either house shall punish any of its members or officers, or any other person, by imprisonment, such imprisonment shall not extend beyond the same session of the legislature. [155]

Term of
imprison-
ment.

§ 15. The assembly has the power of impeaching all civil officers of this state, for mal and corrupt conduct in office, and for high crimes and misdemeanors; but a majority of all the members elected must concur in an impeachment.

Power of
impeach-
ment.

§ 16. Every person appointed to the office of clerk of the senate or assembly, shall, before he enters on the duties of his office, execute a bond to the people of this state, with such security as the comptroller shall approve, in the penal sum of five thousand dollars, conditioned that he shall faithfully perform the duties of his office, and account for all monies which may come to his hands by virtue thereof.

Clerks of
senate and
assembly.

Laws of 1826, 377, § 3.

§ 17. The clerks of the senate and assembly, immediately after any session of their respective houses, shall prepare indexes to the journals kept by them, and shall deliver the same to the state printer, for publication. And whenever any concurrent resolution shall be passed by the legislature, it shall be the duty of the clerk of the house in which it originated, to furnish a certified copy thereof to the secretary of state, to the end that the same may be published with the laws, in case the secretary shall deem it necessary.

TITLE I.

TITLE III.

OF APPLICATIONS TO THE LEGISLATURE.

- SEC. 1. Persons intending to apply for new county, &c., to give notice of their applications.
2. Notice to be given of applications for acts of incorporations, &c.
 3. Notices, how published if no paper in county.
 4. Contents of the notice in the case of corporations.
 5. Contents in other cases.

Certain applicants to give notice.

§ 1. All persons applying to divide or alter the bounds of any county, city or village; or to erect a new county; or to incorporate a new city or village:

And all persons applying for the removal of any courthouse; or the imposing of a tax for making or improving a road, or for any other local purpose in any county, where all or any of the inhabitants of such county are proposed to be taxed:

Notice, how given.

Shall give notice of such intended application by advertisement to be published for at least six weeks successively, immediately before such application, or before the first day of the session at which the same is to be made, in a newspaper printed in the county or in each of the counties where the objects of such application are intended to be carried into effect, and also in case of intended application for the imposition of any tax as aforesaid, in the state paper.

1 R. L., 268; Laws of 1818, 121; 7 B., 421.

[156]
Ib.

§ 2. Every association intending to apply to the legislature for an act of incorporation; and every corporation intending to apply for an alteration, amendment, or extension of its charter, shall cause the like notice of such application to be published in the state paper, and also in a newspaper printed in the county in which such corporation is intended to be, or shall have been, established.

1 R. L., 268; Laws of 1818, 121.

Ib.

§ 3. If no newspaper be printed in a county in which any notice is required to be published, such notice shall be published in like manner, in the place nearest thereto in which a newspaper shall be printed.

1 R. L., 268; Laws of 1818, 121.

Contents of notice.

§ 4. If the application be for an act of incorporation, the notice shall specify the amount of the capital stock requisite to carry the objects of such incorporation into effect; and if the application be for an alteration in any charter already granted, the notice shall state specifically the alteration intended to be applied for.

1 R. L., 268; Laws of 1818, 121.

Ib.

§ 5. The notice of all other applications, of which notice is required to be given, shall specify the nature and objects of such intended applications.

1 R. L., 268; Laws of 1818, 121.

TITLE IV.

TITLE 4.

OF THE ENACTMENT AND PROMULGATION OF STATUTES, AND
OF THE TIME FROM WHICH THEY TAKE EFFECT.

- SEC. 1. Powers of the houses in regard to originating and amending bills.
 2. Assent of two-thirds necessary to certain bills.
 3. No bill deemed to have passed with two-thirds, unless so certified.
 4. Every bill passed and certified to be presented to governor.
 5. Governor, if he disapprove, to return it with objections.
 6. If two-thirds agree to pass it, notwithstanding objections, to be so certified.
 7. Like proceeding in other house.
 8. In such cases yeas and nays to be entered on journals.
 9. If bill be not returned by governor within ten days, it becomes a law.
 10. Secretary of state to receive and deposit laws in his office.
 11. To certify and endorse upon every bill the time it became a law.
 12. Laws to take effect on the twentieth day after their passage.
 13. Secretary of state to deliver copies of laws to state printer.

§ 1. Any bill may originate in either house of the legislature; and all bills passed by one house may be amended by the other. Powers of two houses.

§ 2. The assent of two-thirds of the members elected to each branch of the legislature is requisite to every bill appropriating the public monies or property for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate. Two-third bills.

4 H., 384; 2 H., 35.

§ 3. No bill shall be deemed to have been passed by the assent of two-thirds of the members elected to each house, unless so certified by the presiding officer of each house.

§ 4. Every bill thus passed and certified, must, before it becomes a law, be presented to the governor; if he approves, he must sign it; and he shall endorse thereon a certificate of his approbation, and deliver the same so endorsed to the secretary of state. [157] Governor's assent.

1 R. L., 458, § 1.

§ 5. If the governor do not approve the bill, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. Governor's objections.

1 R. L., 458, § 1.

§ 6. If two-thirds of the members present shall agree to pass the bill, notwithstanding such objections, the presiding officer of such house shall endorse thereon a certificate of such passage by the number so required. Proceedings thereon.

1 R. L., 458, § 1.

§ 7. The bill shall then be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of the members present it becomes a law, and the presiding officer shall endorse thereon a certificate of its passage by the number required, and deliver the bill to the secretary of state.

1 R. L., 458, § 1.

TITLE 4.
Yeas and
nays.

§ 8. In all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill be entered on the journal of each house respectively.

1 R. L., 458, § 1.

If not
returned.

§ 9. If a bill be not returned by the governor within ten days (Sundays excepted) after the same shall have been presented to him, it becomes a law in like manner as if he had signed it; unless the legislature, by their adjournment prevent its return, in which case it does not become a law.

1 R. L., 458, § 1.

Duty of
secretary
of state.

§ 10. The secretary of state shall receive every bill which shall have passed the senate and assembly, and have been approved and signed by the governor, or which shall have become a law notwithstanding the objections of the governor, or which, not having been returned by the governor within ten days, shall have become a law; and shall deposit such laws in his office.

1 R. L., 458, § 1.

It.

§ 11. He shall certify and endorse upon every such bill, the day, month and year, when the same so became a law, and such certificate shall be conclusive evidence of the facts therein declared.

4 H., 384.

Time when
laws take
effect.

§ 12. Every law, unless a different time shall be prescribed therein, shall commence and take effect, throughout the state, on and not before the twentieth day after the day of its final passage, as certified by the secretary of state.

Copy for
publication.

§ 13. The secretary of state shall forthwith deliver a certified copy of each law, other than acts of incorporation, deposited in his office, and of his endorsement thereon, to the state printer, to be printed and published by him, in the manner prescribed in the eighth chapter of this act.

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TITLE V.

OF THE MODE OF TAKING TESTIMONY IN CERTAIN LEGISLATIVE PROCEEDINGS.

- SEC. 1.** Chairmen of committees may administer oaths to witnesses.
2. Chairman of certain committees may issue process for witnesses.
3. Such chairman may also issue commissions to examine witnesses.
4. When such commission may be issued during recess of legislature.
5. How commissions to be directed; to be accompanied by interrogatories.
6. Commissioners to take oath, and issue process for witnesses.
7. Unless otherwise directed witnesses to be examined in private.
8. Witnesses to be examined on oath; their testimony to be reduced to writing.
9. Depositions to be transmitted to chairman of the committee.
10. Commission may be executed by one or more.
11. The commissioners and witnesses to be paid a reasonable compensation.
12. Persons desirous to take testimony in regard to contested elections, may apply to a judge or recorder, &c. for process.

SEC. 13. Such officer to issue a summons, directed to all such witnesses as shall be named.

TITLE I.

14. Summons how served.
15. Notification to adverse party, how to be issued.
16. Notification how to be served.
17. Witnesses who shall attend, to be examined.
18. Testimony to be reduced to writing, and to be transmitted.
19. Witnesses to be entitled to same fees as in courts of record.
20. Penalty on witnesses refusing or neglecting to attend as summoned.
21. Fees of the officer for issuing summons and taking testimony.

§ 1. The chairman of any committee, either of the senate or assembly, or of any joint committee, shall be authorised to administer oaths to all witnesses coming before such committee for examination.

Witnesses before committees.

Laws of 1814, 24.

§ 2. Every chairman of a committee, which, by the terms of its appointment, shall be authorised to send for persons and papers, shall have power, under the direction of the committee, to issue compulsory process for the attendance of any witness within the state, whom the committee may wish to examine.

Process for witnesses.

§ 3. Every such chairman shall also have power, under the direction of the committee, to issue a commission for the examination of any witness, who shall be without the jurisdiction of the state, or if within the state, shall be unable to attend, or who shall, for special reasons, be excused by the committee from attendance.

Commission to take testimony.

§ 4. Whenever a committee shall obtain authority for that purpose, from the house or legislature by which it shall be appointed, it may issue such commission to be executed during the recess of the legislature.

Ib., during recess.

§ 5. Every such commission shall be directed to such magistrates or other persons as the committee may designate; and interrogatories, framed by the committee, shall be annexed thereto.

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How directed, &c.

§ 6. The persons to whom such commissions shall be directed, if they reside within the state, and accept the trust, shall, before they enter on the execution of their duties, take the oath of office prescribed in the constitution; and such commissioners shall have power to issue process to compel the attendance of the witnesses whom they shall be required to examine.

How executed.

§ 7. Unless otherwise instructed by the committee, it shall in all cases be the duty of the commissioners to examine in private every witness attending before them, and not to make public the particulars of such examination, until the same shall be made public by order of the house or legislature appointing the committee.

Ib., examination private.

§ 8. Every witness so attending shall be examined on oath or affirmation, and his testimony shall be reduced to writing by the commissioners, and signed by the witness.

Witness to be sworn.

§ 9. When the commission shall have been duly executed, the commissioners shall annex thereto the depositions of the

Depositions to be transmitted

TITLE 8.

witnesses, duly certified by them, and shall, without delay, transmit the same, enclosed and under seal, to the chairman of the committee by which the commission shall have been issued.

Who may
execute
commission.

§ 10. Every such commission may be executed by any one or more of the persons to whom the same shall be directed, and may, in the discretion of the committee issuing the same, be directed to a single person.

Compensation to commissioners and witnesses.

§ 11. The persons executing any such commission, and all persons examined as witnesses by commissioners, or by a committee of either house, or of the legislature, shall be paid out of the treasury a reasonable allowance for their services, expenses and attendance, to be fixed by the committee, and certified by the chairman thereof, and to be audited by the comptroller.

Contested elections.

§ 12. When any person shall intend to contest the election of any member of the senate or assembly, or to support any such election so intended to be contested, and shall be desirous of obtaining testimony respecting any such election; he may make application to the first judge of a county, or to any judge of a county court of the degree of counsellor at law, or to the mayor or recorder of any city, for process to procure the attendance of the witnesses, whose testimony he may be desirous to obtain.

Summons for witnesses.

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§ 13. The officer to whom such application shall be made, shall thereupon issue a summons, directed to all such witnesses as shall be named by such applicant, and requiring the attendance of such witnesses before him, at some convenient time and place, to be expressed in such summons, in order to be then and there examined touching such election.

How served

§ 14. Such summons shall be served, by delivering a copy thereof to each witness named therein, a reasonable time before the day on which the attendance of such witness is required.

Notification to other party.

§ 15. Whenever any summons shall be issued as aforesaid, the officer issuing the same shall deliver to the applicant a notification, directed to the opposite party, and stating the object of such application, the name of the applicant, and the time and place fixed for the examination of the witnesses.

How served

§ 16. Such notification shall be served on the opposite party, by delivering to him, or leaving at his usual place of abode, a copy thereof, a reasonable time before the day fixed for the aforesaid examination; and such examination shall not be proceeded in, without proof of the due service of such notification.

Witnesses, how examined.

§ 17. All witnesses who shall attend, pursuant to said summons, and all other witnesses who shall be produced at the time and place aforesaid, by either of the parties, shall then and there be examined, on oath or affirmation, before the officer who issued the summons, touching all such matters

TITLE 6.

and things respecting the election about to be contested, as shall be proposed by either of the parties.

§ 18. The testimony given on such examination, shall be reduced to writing by the officer taking the same, and signed by the witnesses respectively; after which, such officer shall transmit the said testimony, duly certified under his hand, together with a copy of the summons and notification issued by him, and of the proof of the service of such notification, enclosed and under seal, to the clerk of the senate, or the house of assembly, as the case may require.

Depositions, how transmitted

§ 19. Every witness attending by virtue of any such summons, shall be entitled to the same fees as are allowed to witnesses in civil suits in courts of record, to be paid by the party at whose instance such witness was summoned.

Witness's fees.

§ 20. If any person, being summoned in the manner aforesaid, shall refuse or neglect to attend in pursuance of such summons, he shall forfeit and pay the sum of one hundred dollars, to the use of the people of this state.

Penalty for non-attendance

§ 21. The following fees shall be allowed to the officer issuing such summons and taking such examination :

Fees of officer.

For issuing the summons, twenty-five cents;

For the notification to the opposite party, twenty-five cents;

For administering an oath or affirmation, twelve and a half cents;

For reducing the testimony of each witness to writing, ten cents for each folio; and five cents for every copy thereof, for each folio;

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For certifying the testimony and enclosing the same to the clerk of the senate or assembly, twenty-five cents.

TITLE VI.

OF THE COMPENSATION OF THE MEMBERS OF THE LEGISLATURE, AND THEIR OFFICERS, AND THE CONTINGENT EXPENSES OF THE SENATE AND ASSEMBLY.

Sec. 1. Members to receive a compensation, but no increase beyond three dollars a day.

2. Members to receive three dollars a day for attendance and travelling.

3. Distance how to be computed.

4. Members who are prevented from attending by sickness, to have like pay.

5. Comptroller to draw warrant on certificate of presiding officer.

6. Salaries allowed to clerks; compensation for making indexes.

7. (Repealed.)

8. Duty of clerks.

9. Pay of other officers.

10. Extra pay prohibited.

11. Contingent expenses of the two houses.

12. Clerks to account with comptroller at the end of each session.

§ 1. The members of the legislature are entitled to receive for their services, a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation can take effect, during the year in which it

Provisions concerning compensation.

TITLE 4.

shall have been made. And no law can be passed increasing the compensation of the members of the legislature beyond the sum of three dollars a day.

Amount of
daily pay.

§ 2. Each member of the senate and assembly, shall be entitled to receive three dollars for every day he shall attend either of them; and the like compensation for every twenty miles of the distance from the place of his residence to the place of the meeting of his house.

Laws of 1823, 10, § 1.

Travelling.

§ 3. Such distance shall be estimated by the most usual route, and shall be computed both for the travelling to, and returning from, the place of meeting.

Laws of 1823, 10, § 1.

Sickness.

§ 4. If any member of the senate or assembly shall, after his arrival at the place of meeting of either house, or on his way thereto, be prevented by indisposition, from attending either of the said houses, he shall be entitled to the like compensation for every day he shall be so prevented.

Laws of 1823, 10, § 1.

Certificate
of presid-
ing officers.

§ 5. The comptroller shall draw his warrant for the payment of such sum as may so become due to each member respectively, upon the receipt of a certificate, signed by the president of the senate, or the speaker of the assembly, (as the case may be,) setting forth the number of days that the member in whose favor it shall be given, may have attended, and the estimated distance of his place of residence, from the place of meeting.

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Laws of 1823, 10, § 1.

Salaries of
chief clerks
of senate
and assem-
bly.

§ 6. There shall be allowed to the chief clerk of the senate and to the chief clerk of the assembly an annual salary of twelve hundred dollars each, in lieu of all other compensation; and the clerk of the senate shall be authorized to appoint a journal clerk, an engrossing clerk, and one clerk for miscellaneous duties, each of whom shall receive, as compensation for his services six hundred dollars. The clerk of the assembly shall be authorized to appoint a journal clerk, an engrossing clerk, and two clerks for miscellaneous duties, each of whom shall receive, as compensation for his services, six hundred dollars.

Laws of 1853, ch. 530. The revisors in their 2d ed. inserted as § 7 the 21st sec. of ch. 377, Laws of 1829, allowing the clerk of the senate \$350 a year extra pay. That sect. never was in fact a part of the Rev. St., and is therefore omitted here. The original § 7 of the Rev. St. provided for compensation for the sergeants-at-arms, doorkeepers, &c. The act of 1853 repeals § 7, but, which of these two sections is thus repealed it is not for the editor to determine.

Duty of
clerks.

§ 8. The clerk of the senate shall keep a journal of executive proceedings, and each of the said chief clerks as aforesaid shall prepare indexes to the journals and documents of the two houses, the same to be subject to the approval of the

secretary of state, and without any other compensation or allowance for the same than is above provided.

TITLE 4

Laws of 1853, ch. 530.

§ 9. The sergeant-at-arms and assistant sergeant-at-arms of each house, (the latter of whom shall act as postmaster thereof) the door-keepers and assistant door-keepers of each house, and the librarian and assistant librarian of the assembly shall be entitled to the same mileage and compensation for each day's actual attendance as members of the legislature, to be certified in the same manner; and there shall be paid to each of the messengers of the two houses, to wit, three of the senate and ten of the assembly, the sum of one dollar for each day's actual attendance in the performance of their duties; and besides the officers above named none other or others shall be employed or paid except by bill for that purpose; and no extra allowance shall be made to the officers above named on any pretence whatever.

Pay of officers.

Laws of 1853, ch. 530.

§ 10. No fee, per diem compensation, or mileage shall be allowed to any officer or messenger of either branch of the legislature for or on account of his attendance upon the opening of the next succeeding session of said body, except to the clerk thereof, who shall be allowed fifty dollars in lieu of all mileage, pay, or perquisites therefor.

Extra pay prohibited.

Laws of 1853, ch. 530.

§ 11. All purchases of furniture and other articles mentioned in this section for the use of the legislature, or of either house, shall be made by the clerks of the respective houses under the direction of the comptroller, and subject to his approval. And all moneys required to defray the expenses of such furniture, of the legislative manual, of diagrams and of file boards for bills and documents of the two houses, of postage on papers and documents sent by members through the mails, and of transmitting the session laws, journals, and documents of the two houses to the members and officers thereof, shall be paid out of the general fund, but no money shall be paid out of the treasury by virtue of any resolution of either house of the legislature, and the appropriation known as the contingent fund is hereby abolished.

Contingent expenses of the legislature.

Laws of 1853, ch. 530, made this section a substitute for § 11 and § 12.

§ 13. The clerks of the senate and assembly shall account to the comptroller at the end of each session for any moneys received by them, and shall furnish to him satisfactory evidence that the charges contained in their accounts are correct and reasonable, and all accounts and vouchers for the expenses provided for in the last two preceding sections of this act shall be presented for audit at the end of each month, and shall, as far as practicable include all expenses and payments up to the time of rendering such accounts. The comptroller shall make such rules and regulations with reference to this

The clerks to render accounts.

TITLE 1.

and the two* preceding sections of this act, and to enforce the observance of the same as to him shall seem proper.

Laws of 1853, ch. 530, made this section a substitute for sections 13 and 14 of the Rev. St. There never were any sections 11, 12, 13 and 14 to this title. The confusion in these enactments, and in the numbering of the sections, is the fault of the act of 1853.

CHAP. VIII.

Of the duties of the executive officers of the state, and of various matters connected with their respective departments.

(Took effect January 1, 1898.)

TITLE 1.—Of the governor, lieutenant-governor, or other person administering the government of the state.

TITLE 2.—Of the secretary of state.

[163] TITLE 3.—Of the comptroller.

TITLE 4.—Of the treasurer.

TITLE 5.—Of the attorney-general.

TITLE 6.—Of the surveyor-general.

TITLE 7.—Of the state printer.

TITLE 8.—Provisions relating to two or more of the executive officers.

TITLE I.

OF THE GOVERNOR, LIEUTENANT-GOVERNOR, OR OTHER PERSON ADMINISTERING THE GOVERNMENT OF THE STATE.

SEC. 1. Military and naval command of governor.

2. His general duties.

3. His general powers.

4. To have custody of the great and privy seals.

5. In case of his impeachment &c., lieutenant-governor to act.

6. Lieutenant-governor is president of senate.

7. When president of senate to act as governor.

8. Governor may deliver over persons charged with crime.

9. Upon whose requisition such delivery to be made.

10. What evidence governor to require of guilt of person charged.

11. Expense of such delivery to be paid by persons to whom it is made.

12. Governor to notify attorney-general, when suits are commenced, &c

13. He may employ counsel to assist attorney-general, in defending such suits.

14. Such counsel and the attorney-general, to be paid out of treasury.

15. Governor may also employ counsel to assist attorney-general, in any suit.

16. Governor to exchange copies of session laws with other states.

17. Where laws received by him from other states, to be deposited.

18. Expenses of these duties paid out of treasury.

19. Provisions in relation to governor, to whom to apply.

20. To keep register of applications.

21. And the same for pardons.

22. To preserve the reports of judges.

23. To keep an account of expenses.

24. Pay of private secretary and clerk hire.

* The two sections here referred to are doubtless the preceding section of this title, § 11 and § 7 of the act of 1853, which latter is not made a part of the Rev. St. as the former is.

SECTION 1. The governor is general and commander-in-chief of all the militia, and admiral of the navy of the state, including the land and naval forces of the state, in time of war, or which this state may keep, with the consent of congress, in time of peace.

§ 2. It is the duty of the governor,

His duty.

1. To communicate by message to the legislature at every session, the condition of the state, and to recommend to them such measures as he judges expedient.

2. To transact all necessary business with the officers of government, civil and military.

3. To expedite all such measures as may be resolved upon by the legislature, and to take care that the laws be faithfully executed.

§ 3. He has power,

Powers.

1. To convene the legislature or the senate only, on extraordinary occasions.

2. To grant reprieves and pardons after conviction, for all offences, except treason and cases of impeachment, and to suspend the execution of the sentence or conviction for treason, until the case shall be reported to the legislature, at its next session.

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§ 4. The governor shall have the custody of the great and privy seals, of which descriptions in writing, have been deposited and recorded, in the secretary's office, and which shall be and continue, the great seal and the privy-seal of this state.

Seals of
state.

1 R. L., 459, § 6.

§ 5. In case of the impeachment of the governor, or his removal from office, death, resignation or absence from the state, the powers and duties of the office devolve upon the lieutenant-governor, for the residue of the term, or until the governor, absent or impeached, shall return or be acquitted. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he still continues commander-in-chief of all the military force of the state.

Lieutenant-
governor.

§ 6. The lieutenant-governor is president of the senate, but has only a casting vote therein.

§ 7. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, or die, or be absent from the state, the president of the senate must act as governor, until the vacancy shall be filled, or the disability shall cease.

§ 8. The governor may, in his discretion, deliver over to justice, any person found within the state, who shall be charged with having committed without the jurisdiction of the United States, any crime, except treason, which by the laws of this state, if committed therein, is punishable by death or by imprisonment in the state prison.

Foreign
criminals.

TITLE I.
Foreign
criminals.

§ 9. Such delivery can only be made, on the requisition of the duly authorized ministers or officers of the government, within the jurisdiction of which, the crime shall be charged to have been committed.

Laws of 1822, 139.

Ib. § 10. It shall be the duty of the governor, to require such evidence of the guilt of the person so charged, as would be necessary to justify his apprehension and commitment for trial, had the crime charged, been committed within this state.

Laws of 1822, 139.

Ib. § 11. The expense of apprehending and delivering such person, shall be defrayed by those to whom he shall be delivered.

Laws of 1822, 139.

Suits. § 12. Whenever the governor shall receive notice of any suit or proceeding having been commenced, for the recovery of any lands held under a warranty from the people of this state, it shall be his duty to inform the attorney-general, and require him to make every legal or equitable defence, against such suit or proceedings.

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Ib. § 13. The governor may employ such able counsel and other persons as he may judge proper, to assist the attorney-general in making such defence.

Ib. § 14. Such sums of money, as the governor shall certify to be reasonable and just, for the payment of counsel fees, and other expenses incurred in every such defence, or as an allowance to the attorney-general for his services and expenses therein, shall be paid out of the treasury.

Ib. § 15. The governor may also employ such counsel as he may deem proper, to assist the attorney-general in any suit prosecuted or defended by him, in behalf of this state; and the reasonable compensation of such counsel, to be certified by the governor, shall be paid out of the treasury.

1 R. L., 156, § 3; *Ib.*, 348, § 24.

Session
laws.

§ 16. It shall be the duty of the governor to transmit, free of expense, to the executive of each state in the union, three copies of the acts of each future session of the legislature of this state, as soon as the acts shall be printed, and to request a similar communication to be made to him, of the laws of the several states.

Laws of 1825, 7.

Laws of
other states

§ 17. Whenever, in pursuance of such request, the statutes of any other state shall be received by the governor, he shall deposit one copy thereof in the state library, one in the senate chamber and one in the assembly chamber; if but one copy be received, it shall be deposited in the state library.

Laws of 1825, 7.

Expenses.

§ 18. All expenses incurred in the execution of the duties prescribed by the two last preceding sections, shall be paid out of the treasury.

Laws of 1825, 7.

§ 19. Every provision in the constitution and laws of this state, in relation to the powers and duties of the governor, and in relation to acts and duties to be performed, by other officers or persons, towards him, shall be construed to extend to the person administering, for the time being, the government of the state.

TITLE I.
General
provision.

§ 20. The governor shall cause to be kept, in proper books to be provided for that purpose, a full and complete register of all applications or petitions made to him for the discharge of any duty imposed on him, by the constitution or laws of this state, or for the exercise of any power in him vested ; which register so made shall be and remain in the executive chamber and the original papers on which each application or petition is founded shall remain on file in the executive chamber, and, with the register so made, shall be delivered to his successor when he shall have been duly qualified. But whenever an application for appointment to office in his gift or nomination, shall be refused by the governor, he may in his discretion deliver to the unsuccessful applicant, his letters, recommendations and petitions in relation thereto.

Governor to
keep register of
applications.

Laws of 1858, chap. 64.

§ 21. The governor shall cause to be provided in his office, proper books in which shall be entered all applications made to him for the pardon of any prisoner or commutation of any sentence with a record of the same and a list of the official signatures and recommendations in favor of such application, and all the original papers on which such application is founded shall remain on file in the executive chamber.

And of
pardons.

Laws of 1858, chap. 64.

§ 22. The governor shall cause to be preserved and filed in his office the judges' reports made to him pursuant to the provisions of the statute, of the testimony on which capital convictions had taken place. He shall also keep a register of the same, in which shall be recorded any action which he may have taken in relation to such convictions, and the same shall remain in the executive chamber.

To preserve
the reports
of judges.

Laws of 1858, chap. 64.

§ 23. The governor shall also cause to be kept a book containing a statement of his disbursements for the incidental expenses of his department : of rewards offered by him for the apprehension of criminals and expenses incurred in sending the reports of courts and copies of the laws of this state to other states, and of all other official expenses and disbursements.

To keep an
account of
expenses.

Laws of 1858, chap. 64.

§ 24. The salary of the private secretary is hereby fixed at two thousand dollars per annum, and a further sum of twenty-six hundred dollars per annum, or so much thereof as may be required, shall be allowed to the governor for the payment of

Salary of
private
secretary
and clerk
hire.

TITLE 2.

clerks and messengers for the executive department, to be paid by the treasurer to the governor, on the warrant of the comptroller.

Laws of 1858, chap. 64.

TITLE II.

OF THE SECRETARY OF STATE.

- SEC. 1. Secretary of state to have care of all books and papers deposited in his office.
2. All deeds to state, to be deposited there.
 3. To provide books for recording depositions of resident aliens.
 4. Copies of papers in his office certified by him, &c., evidence.
 5. Secretary of state to attend legislature, to receive bills that become laws.
 6. To cause original laws passed at each session to be bound.
 7. One copy of the laws printed by state printer, to be deposited in his office.
 8. To distribute the printed laws and journals of each session.
 9. To send four copies to secretary of state of the United States.
 10. To deliver one copy to Atheneum in Philadelphia, Boston, New-York and Albany, and one to Historical society of New-York.
 11. To distribute laws of congress in same manner as laws of this state.
 12. New town or county erected, to be furnished with a complete set of laws.
 13. Secretary of state to purchase necessary sets of laws for distribution.
 14. To transmit to county clerks laws and journals.
 15. Also to send the laws to different states.
 16. To deliver to county clerks the volumes of reports.
 17. To deliver to clerks of new counties a set of reports.
 18. To send to county clerks a copy of state prison reports.
 19. Also to send lists of licensed hawkers, &c.
 20. Description in writing of arms of state, and of great and privy seals, and of seal of secretary of state, to remain public records.
 21. What papers to be sealed with privy seal.
 22. Deputy secretary, his powers and duties.

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General duties.

§ 1. The secretary of state shall have the custody of all the books, records, deeds, parchments, maps, and papers, now deposited, or that may hereafter be deposited or kept, in his office; and shall, from time to time, make such provision for the arrangement and preservation thereof, as he may deem necessary.

State deeds.

§ 2. All deeds and conveyances, other than mortgages, belonging to the people of this state, shall be deposited in the office of the secretary of state.

1 R. L., 477, § 10.

Books for recording.

§ 3. The secretary of state shall provide proper books, for the recording of the depositions or affirmations required by law, to be made by resident aliens, desirous to take and hold real estate; and shall record the same in such books.

Laws of 1825, 427, § 2.

Copies.

§ 4. All copies of records and papers in the office of the secretary of state, certified by him, and authenticated by the seal of his office, shall, in all cases, be evidence, equally and in like manner, as the original.

Laws of 1825, 427, § 2; 1 R. L., 527, § 35.

Laws.

§ 5. The secretary of state shall attend at every session of

the legislature, for the purpose of receiving bills which shall have become laws.

1 R. L., 458, § 1.

§ 6. Immediately after each session of the legislature, the secretary of state shall cause the original laws passed at such session, together with such certified copies of concurrent resolutions as shall have been delivered to him, to be bound together in a volume, of such size as he shall think proper; and he shall also cause the title thereof, with the session at which the same shall have been passed, to be written or printed on the back of such volume. Laws.

1 R. L., 458, § 2.

§ 7. He shall deposit in his office, one copy of the laws printed by the state printer, having first examined and compared the same with the original laws on file, and noted at the end of each act any error or omission that may be found in the printed copy; and shall cause the title thereof, with the session at which the same shall have passed, to be written or printed on the back of such volume. [1877] Ib.

1 R. L., 458, § 2.

§ 8. The secretary of state shall distribute the printed laws and journals of each session, immediately after their publication, as follows: Laws and Journals.

1. To the clerk of the senate, for the use of the senate, eight copies.

2. To the clerk of the assembly, for the use of the assembly, twenty copies.

3. To each of the following officers and persons, namely: the governor, the lieutenant-governor, the members of the senate and assembly, the chancellor, the justices of the supreme court, the circuit judges, the comptroller, the treasurer, the surveyor-general, the attorney-general, the librarian of the state library, for the use of the library, the commissary-general, the adjutant-general, and the several county clerks, one copy.

4. To each of the following officers, namely: town clerks, district attorneys, and supervisors' clerks, one copy of the laws, without the journals.

§ 9. The secretary of state shall transmit four copies of the printed laws of each session, immediately after their publication, to the secretary of state of the United States. Laws.

Laws of 1820, 18.

§ 10. He shall also deliver to the atheneum of the city of Philadelphia, and to the atheneum of the city of Boston, or to such person as they shall respectively direct, a copy of the printed laws passed at each future session of the legislature; and in like manner to the atheneums of the cities of New-York and Albany, and the historical society of the city of New-York, one copy both of the laws and journals. Ib.

Laws of 1820, 7.

TITLE 2.
Acts of
congress.

§ 11. He shall also cause the acts of the congress of the United States, which may be received at his office, to be distributed in the same manner as the laws of this state are directed to be distributed.

1 R. L., 484, § 13.

New county
&c.

§ 12. Whenever a new county or town shall be erected, the secretary of state, shall transmit to the clerk of such county or town, a complete set of the laws of this state, commencing with the revised laws passed at this session of the legislature, and including the laws subsequently passed.

Ib.

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§ 13. The secretary of state shall be authorised under the direction of the governor, to purchase, from time to time, as many sets of the laws of this state, as may be necessary for the supply of new counties and towns, and for other objects required by law.

Laws of 1818, 234.

Laws and
journals.

§ 14. The secretary of state, as soon as may be, after the laws and journals of each session have been deposited in his office, shall transmit, in boxes, at the expense of the state, to each county clerk, the requisite number of laws and journals intended for the use of such county, and required to be distributed to the members of the legislature residing therein, and to the other officers in such county entitled thereto.

Laws of 1815, 280, § 5.

Laws for
other states

§ 15. He shall also put up in boxes, the laws directed to be sent by the governor to the several states in the union, and shall transmit the same, at the expense of the state, in such manner as the governor shall direct.

Laws of 1815, 280, § 5.

Reports.

§ 16. He shall, from time to time, deliver to such of the county clerks as shall be entitled thereto, such copies of the reports published by the state reporter, as shall have been deposited in his office for that purpose by the reporter.

1 R. L., 320, § 10.

Ib.

§ 17. He shall also procure, at the expense of this state, and deliver to the clerk of each county hereafter erected, a complete set of the reports of the supreme court of this state, for the use of the county courts of such county.

Laws of 1824, 74.

State
prison re-
ports.

§ 18. The secretary of state shall, annually, on or before the first Tuesday of May, transmit to each of the county clerks in this state, a copy of the reports received by him, for the preceding year, from the agents of the several state prisons in this state.

Laws of 1819, 90, § 15; 2 R. L., 229, § 3.

Pedlars, &c.

§ 19. He shall, on or before the tenth day of May, in each year, transmit to each county clerk in this state, a certified

list of the names of the several persons licensed as hawkers, peddlers, or petty chapmen.

Laws of 1819, p. 90, § 15; 2 R. L., 229, § 3.

§ 20. The description, in writing, of the arms of the state, and of the great and privy seals, and of the seal of office of the secretary of state, deposited and recorded in the secretary's office, shall remain as public records; and the said arms shall continue to be the arms of the state, and the said seal of office, to be the seal of office of the secretary of state.

Arms and
seals.

1 R. L., 459, § 6.

§ 21. The privy seal, shall be the seal for military commissions; and all such matters as have issued under the great seal since the sixteenth day of March, one thousand seven hundred and seventy-eight, except copies of papers and records, certified by the secretary of state, or his deputy, and authenticated under his seal of office, shall continue to be issued under the great seal, and shall be made out and recorded in the secretary's office.

Do.

[100]

1 R. L., 459, § 6.

§ 22. There shall be a deputy secretary of state, who may perform all the duties belonging to the office of secretary of state; except as commissioner of the land-office, commissioner of the canal fund, state canvasser, state sealer of weights and measures, and superintendent of common schools.

Deputy
secretary.

TITLE III.

OF THE COMPTROLLER.

ART. 1. — Of the general duties and powers of the comptroller.

ART. 2. — Of proceedings against persons accountable for public monies.

ART. 3. — Of the settlement of accounts for lands purchased from, or mortgaged to the people of this state.

ARTICLE FIRST.

OF THE GENERAL DUTIES AND POWERS OF THE COMPTROLLER.

SEC. 1. His general duties.

2. To require persons receiving public monies to account to him.
3. May require persons presenting accounts, to make oath.
4. He shall countersign and enter all treasury checks and receipts.
5. He is to draw in favor of treasurer, for dividends on all stock owned by state.
6. To procure monthly statements from the banks.
7. To keep an account between the state and the treasurer.
8. To examine monthly the bank books kept by the treasurer.
9. To examine bonds, &c., on which money may be due to the state.
10. To send annually to auctioneers, all new auction laws, and to report to the legislature the returns made by them.
11. To make temporary loans, when necessary.
12. Such loans to be paid as soon as sufficient money in treasury.
13. Comptroller to vote on stocks owned by state.
14. May publish laws relating to payment of money due the state.
15. When monies paid at treasury through mistake.
16. All mortgages, &c., given to the state, to be deposited in comptroller's office.

TITLE 3.

17. To direct in what banks certificates of stock shall be deposited.

18. Deputy comptroller, his powers.

General
duties.

§ 1. It shall be the duty of the comptroller,

1. To superintend the fiscal concerns of the state, and to manage the same in the manner required by law.

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2. To exhibit to the legislature, at its annual meeting, a complete statement of the funds of the state, of its revenues, and of the public expenditures during the preceding year, with a detailed estimate of the expenditures, to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditure, and distinguishing between such, as are provided for by permanent or temporary appropriations, and such as require to be provided for by law: and shewing the means, from which such expenditures are to be defrayed.

3. To suggest plans for the improvement and management of the public revenues.

4. To keep and state all accounts between this state and the United States, and all other accounts in which the state is interested.

5. To examine and settle the accounts of all persons indebted to the state, and to certify the amount, or balance, to the treasurer.

6. To direct and superintend the collection of all monies due to the state.

7. To examine and liquidate the claims of all persons against the state, in cases where provision for the payment thereof shall have been made by law; and where no such provision, or an insufficient provision shall have been made, to examine the claim and report the facts, with his opinion thereon, to the legislature.

8. To require all persons who shall have received any monies belonging to the state, and shall not have accounted therefor, to settle their accounts.

9. To draw warrants on the treasurer for the payment of all monies directed by law to be paid out of the treasury; but no warrant shall be drawn, unless authorized by law, and every warrant shall refer to the law under which it is drawn.

1 R. L., 474, § 1; Ib. 478, § 15.

May require
accounts.

§ 2. The comptroller shall, from time to time, require all persons receiving monies, or securities, or having the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him; and all such persons shall render such statements, at such time, and in such form as he shall require.

May require
oath.

§ 3. The comptroller may require any person presenting to him an account for settlement, to be sworn before him, touching the said account; and when so sworn, to answer orally, as to any facts relating to the justness of the said account.

Checks and
receipts.

§ 4. He shall countersign and enter all checks drawn by the treasurer, and all receipts for money paid to the treasurer; and

no such receipts shall be evidence of payment, unless so countersigned.

1 R. L., 477, § 9.

§ 5. He shall draw, in favor of the treasurer, on the presidents and directors of all banks, and other corporations, and joint stock companies, in which the state may own stock, for the dividends on such stock, as the same may become due. Dividends.

1 R. L., 477, § 8.

§ 6. He shall procure, from the books of the banks in which the treasurer shall make his deposits, monthly statements of the monies which shall be received and paid out of the same, on account of the treasurer. Treasurer's accounts.

1 R. L., 473, § 3.

§ 7. He shall keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all monies received by him, and credit him with all warrants drawn on and paid by him. [171] Ib.

1 R. L., 474, § 1; 1 R. L., 473, § 3.

§ 8. On the first Tuesday of every month, or oftener, if he deems it necessary, he shall carefully examine the accounts of the debts and credits in the bank books kept by the treasurer, and if he discovers any irregularity or deficiency therein, he shall, unless the same be rectified or explained to his satisfaction, forthwith report the same, in writing to the governor. Ib.

1 R. L., 474, § 1; 1 R. L., 473, § 3.

§ 9. He shall, from time to time, examine the bonds, mortgages, and other securities on which money may be due to the people of this state, and shall make enquiries relative to the sufficiency of the security for the payment of such monies; and in addition to the payment of interest, he shall require the payment of such part of the principal, as he may deem necessary for the security and interest of the state. State securities.

Laws of 1826, 354, § 6.

§ 10. He shall transmit, annually, by mail, or otherwise to each auctioneer, in this state, who shall have notified him of his acceptance of the said office, a copy of such laws as may, from time to time, be passed relative to sales by auction; and he shall also make an annual report to the legislature, of the returns made by auctioneers. Auctioneers.

Laws of 1817, 332, § 15.

§ 11. It shall be lawful for the comptroller, in the name and in behalf of the people of this state, from time to time, as the legal demands on the treasury may render it necessary, to make such temporary loans, at a rate of interest not exceeding six per cent. per annum, from corporations or individuals within this state, as may be necessary to discharge such demands; and he shall draw his warrant for the monies Temporary loans.

TITLE A.

so borrowed, in favor of the treasurer, and charge him with the amount thereof.

1 R. L., 480, § 21; Ib., 481, § 27; Laws of 1815, 33, § 8; 1816, 292, § 35.

Temporary loans.

§ 12. Such temporary loans shall be paid, as soon as there shall be sufficient money for that purpose in the treasury; and the comptroller shall report to the legislature, his proceedings in relation to every such loan made by him.

1 R. L., 480, § 21; Ib., 481, § 27; Laws of 1815, 33, § 8; 1816, 292, § 35.

To vote for state.

§ 13. The comptroller shall have power to vote, either in person, or by proxy, in behalf of the state, at all elections of directors of banks, or other corporations, or joint stock companies, at which this state is entitled to vote.

1 R. L., 476, § 7.

May publish laws.

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§ 14. He may, from time to time, cause to be published at the expense of this state, in one or more of the newspapers printed therein, such laws of this state, or extracts therefrom, relating to the payment of monies due to this state, or the duties to be performed by the public officers thereof, as he may deem necessary.

Laws of 1817, 300, § 12.

Payments through mistake.

§ 15. Whenever the comptroller shall be satisfied that monies have been paid into the treasury through mistake, he may draw his warrant therefor on the treasurer, in favor of the person who may have made such payment; but this provision shall not extend to payments on account of taxes, nor to payments on bonds and mortgages.

1 R. L., 477, § 13.

State securities.

§ 16. All leases, mortgages, bonds, and other securities for money given to the people of this state, unless otherwise specially directed, shall be deposited and kept in the office of the comptroller.

1 R. L., 477, § 10.

Ib.

§ 17. The certificates for stock of any kind, owned by the people of this state, shall be deposited, for safe keeping, in such banks as the comptroller may select.

1 R. L., 477, § 11.

Deputy comptroller.

§ 18. There shall be a deputy comptroller, who may perform any of the duties of the comptroller, except the drawing of warrants on the treasury, the auditing of public accounts, and the duties of the comptroller as commissioner of the land-office, commissioner of the canal fund, and state canvasser.

1 R. L., 480, § 23.

ARTICLE SECOND.

OF PROCEEDINGS AGAINST PERSONS ACCOUNTABLE FOR PUBLIC MONIES.

SEC. 19. Comptroller may issue a notification to any person not accounting for public monies.

20. The requirements of such notification.
21. To be served by sheriff of county in which person resides.
22. Return, verified by the sheriff, evidence of the proceedings.
23. If party fails to account, account to be given for prosecution.
24. Such copy of account certified by comptroller, sufficient evidence.
25. Defendant to pay costs, unless sued in a representative character.
26. When accounts are rendered, comptroller to examine, and to settle them.
27. When settled, comptroller to send copy to party.
28. Certified copy of account, sufficient evidence to support action for balance.
29. If, upon the trial, the defendant shall give any other evidence than was adduced to the comptroller, he shall pay costs.
30. Where a number receive monies, comptroller may settle their accounts separately.
31. If any one of them be sued, he can not plead non-rejoinder in abatement.
32. Nothing in this article to impair any other remedy.

§ 19. Whenever the comptroller shall deem it expedient, he shall issue a notification, in the name of the people of this state, to any person who shall have received monies belonging to the state, for which he shall not have accounted. In case of the death of such person, the notification shall be directed to his legal representatives. Notification. [173]

1 R. L., 478, § 15 & 16.

§ 20. Such notification shall require, that within a limited period, not less than sixty nor more than ninety days from the date thereof, all the accounts and vouchers for the expenditure of such monies, shall be rendered to the comptroller. Ib.

1 R. L., 478, § 15 & 16.

§ 21. Such notification shall be served by the sheriff of the county where the person to whom the same shall be directed, shall reside, by delivering a copy thereof to him, or by leaving such copy at his usual place of abode, at least forty days before the time limited in the notification for rendering such accounts and vouchers. How served

1 R. L., 478, § 15 & 16.

§ 22. The return of such notification to the comptroller's office, with the certificate of the sheriff endorsed thereon, that the service has been made by delivering a copy of the notification to such person, or by leaving such copy at his usual place of abode, shall be conclusive evidence of the proceedings. Evidence of service.

1 R. L., 478, § 15 & 16.

§ 23. In case the party shall fail to render such accounts and vouchers, within the time limited in such notification, the comptroller shall state an account against him, charging interest at the rate of seven per cent. per annum, from the time the notification was served, and shall deliver a copy of such account to the attorney-general for prosecution. Proceedings if no account rendered.

1 R. L., 478, § 19.

TITLE 2.
Proceed-
ings if no
account
rendered.

§ 24. Such copy, certified by the comptroller, shall be sufficient evidence to support an action for the balance therein stated, subject to the right of the defendant to plead and give, in evidence, all such matters as shall be legal and proper for his defence or discharge.

1 R. L., 478, § 19.

Id.

§ 25. The party so sued, shall be subject to the costs and charges of suit, whether the ultimate decision be against him, or in his favor, unless sued as the representative of the original party.

1 R. L., 478, § 19.

Proceed-
ings if ac-
count be
rendered.

§ 26. Whenever accounts and vouchers are rendered within the time limited in a notification, or without any notification being issued, the comptroller shall proceed immediately to examine the same, and if such accounts and vouchers are regular and sufficient, shall liquidate and settle them; but if any of the necessary vouchers are wanting, or are, in his opinion, insufficient, he shall give notice to the party, and require him to supply such defect, within the period of not less than sixty, nor more than ninety days; and at the expiration of the time limited, the comptroller shall liquidate and settle such accounts, upon the vouchers and proofs which shall have been delivered to him.

1 R. L., 478, § 17.

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Proceed-
ings when
account is
settled.

§ 27. When the comptroller shall have settled any such account, he shall transmit a copy of the account, as settled by him, to the party; and if any balance is certified to be due to the state, and the same shall not be paid to the treasurer within ninety days thereafter, the comptroller shall deliver a copy of such account to the attorney-general, for prosecution.

1 R. L., 478, § 17.

Id.

§ 28. Such copy, certified by the comptroller, shall be sufficient evidence to support an action for the balance therein stated, subject to the right of the defendant, to plead and give in evidence all such matters as shall be legal and proper for his defence or discharge.

1 R. L., 478, § 17.

Id.

§ 29. If any such defendant shall, upon the trial in any such action, give any evidence other than such as was produced to the comptroller, such defendant shall be subject to the costs and charges of such suit, whether the ultimate decision shall be against him, or in his favor.

1 R. L., 478, § 17.

Joint ac-
counts.

§ 30. Where any number of persons shall have received any monies for which they are accountable to the state, the comptroller may, in his discretion, settle the accounts of any one or more of them, separately.

1 R. L., 478, § 18.

Id.

§ 31. In such case, no person shall be allowed to plead in

abatement, to any suit to be brought for any balance which shall be certified to be due from him or them, or to give in evidence upon the trial thereof, that any other person was concerned with him or them, in the receipt or expenditure of the said monies.

1 R. L., 478, § 18.

§ 32. Nothing in this Article contained shall be construed Proviso. to impair any legal remedy which might be used, if this Article was not in force, for the recovery of any debt due or to become due to the people of this state.

1 R. L., 478, § 22.

ARTICLE THIRD.

OF THE SETTLEMENT OF ACCOUNTS FOR LANDS PURCHASED FROM, OR MORTGAGED TO, THE PEOPLE OF THIS STATE.

Sec. 33. Comptroller to open accounts against persons for a subdivision of lot.

34. To apply prior payments to the credit of part.

35. Where separate receipts were given, to be delivered to comptroller.

36. When a mortgage is paid, treasurer's receipt to be a sufficient discharge.

37. When part of a mortgage is paid off, comptroller shall discharge the same.

38. If it be part of lot, comptroller to certify that it has been paid off.

39. Although no separate account is opened, comptroller to execute discharge when.

40. Persons claiming benefit, when to produce map and survey.

41. Comptroller may assign mortgages given to state.

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§ 33. It shall be the duty of the comptroller, on application Separate accounts. to him for that purpose, to open accounts in his office against any person, for any part or subdivision of any lot of land purchased from, or mortgaged to the state, for the proportionate part of the monies due to the state on any such part or subdivision, and thereafter to give credit for the payments on the several parts or subdivisions, as the persons making such payments may require.

1 R. L., 476, § 4; Laws of 1815, 10, § 3.

§ 34. The comptroller may pass any prior payments, to the Prior payments. credit of any part or subdivision, which shall appear by satisfactory proof, to have been originally intended to be paid on such part or subdivision, or by, or for the use of, the person claiming the credit, whether so expressed in the receipts or not; but no part of any such payments shall go to the reduction of the principal due on any such part or subdivision, unless the payments shall exceed the interest, calculated on the principal due, on such part or subdivision, to the day when such part or subdivision is to be paid off, or a new account to be opened therefor.

1 R. L., 476, § 5.

§ 35. Where it appears that separate receipts were given Receipts. by the treasurer, for any payments which may be claimed to be credited to the account of any such part or subdivision, the receipts shall be delivered up to the comptroller, to be filed in his office.

1 R. L., 476, § 5.

TITLE 2.
Discharge
of mort-
gages.

§ 36. Whenever any mortgage given to the people of this state shall be paid, the treasurer's receipt, countersigned by the comptroller, setting forth that the whole sum due on any such mortgage has been paid shall be a sufficient discharge of such mortgage; and the secretary of state or county clerk, in whose office any such mortgage shall have been registered, shall enter a minute of such payment on the margin of the registry of such mortgage.

1 R. L., 475, § 2.

Discharge
of part
of mort-
gages.

§ 37. When any part or subdivision, for which a separate account has been opened, shall have been fully paid, the comptroller shall, if the same be a part or subdivision of a lot mortgaged to the people of this state, discharge the same from such mortgage; and his certificate shall be sufficient to authorize the secretary of state or county clerk to enter a minute of such payment on the margin of the registry of such mortgage.

1 R. L., 475, §§ 3, 4.

Id.

§ 38. If the part or subdivision so paid off, be a part or subdivision of a lot purchased from, but not granted by the state, then the comptroller shall certify that such part or subdivision has been so paid off.

1 R. L., 475, §§ 3, 4.

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Discharge
of part
without
separate
account.

§ 39. The comptroller may also execute the like discharge or certificate, whenever the owner of any such part or subdivision, shall have paid into the treasury, the full proportion of principal and interest due thereon, though no separate account shall have been opened therefor.

1 R. L., 475, §§ 3, 4.

Duties of
applicants.

§ 40. Every person claiming the benefit of the thirty-third and thirty-ninth sections of this title, shall produce a map and return of survey of the whole lot, showing particularly the part or subdivision owned by him, and shall also produce satisfactory proof, that the residue of the lot is sufficient security for the sum remaining due thereon.

1 R. L., 475, §§ 3, 4.

Assign-
ment of
mortgages.

§ 41. The comptroller may, in his discretion, on the request in writing of the owner or owners of any land mortgaged to the people of this state, who shall then be in the actual possession of such land, assign such mortgage, together with the bond or other collateral instrument accompanying the same, to such person as shall be named by such owner or owners; on payment by such assignee, into the treasury, of the amount of principal and interest due on such mortgage.

Laws of 1822, 193, § 1; 1825, 441, § 1.

TITLE IV.

OF THE TREASURER.

- Sec. 1. Treasurer to receive monies paid into treasury.
 2. To give bond in sum of fifty thousand dollars.
 3. Effect of bond.
 4. When bond of former treasurer to be given up.
 5. No monies to be paid by him, except on warrant of comptroller.
 6. Treasurer to report annually to legislature.
 7. Monies received by treasurer, where to be deposited.
 8. Monies deposited in Manhattan bank in New York, subject to be drawn for.
 9. Disposition to be made of those monies.
 10. Treasurer to keep a bank book with such banks.
 11. Said banks to transmit monthly accounts to treasurer.
 12. Monies to be drawn by checks of treasurer, countersigned by comptroller.
 13. Treasurer to exhibit his bank book to comptroller monthly.
 14. Treasurer's accounts to be annually closed, and examined by a committee.
 15. Committee to make such examination, and report to the legislature.
 16. Committee to compare warrants of comptroller with the laws.
 17. Legislature to supply vacancies in the committee.
 18. Each member to receive three dollars a day.

§ 1. The treasurer shall receive all monies which shall, Duty.
 from time to time, be paid into the treasury of this state.

§ 2. The treasurer shall, within ten days after he receives Bond.
 notice of his election, and before he enters upon the execu-
 tion of his office, give a bond to the people of this state in
 the sum of fifty thousand dollars, with not less than four [177]
 sufficient sureties, to be approved of by the president of the
 senate and speaker of the house of assembly, conditioned
 that he will faithfully execute the duties of his office; which
 bond shall be deposited in the office of the secretary of state.

1 R. L., 472, § 1.

§ 3. Such bond shall be deemed to extend to the faithful m.
 execution of the office of treasurer, by the person elected
 thereto, until a new appointment of treasurer be made, and a
 new bond given, under such appointment.

1 R. L., 472, § 1.

§ 4. After such new appointment shall have been made, and m.
 such new bond given, upon the filing in the office of the secre-
 tary of state, of a certificate from the committee who shall
 have examined and settled the accounts of the treasurer of
 the preceding year, expressing that such accounts are regularly
 stated and balanced, and that the balance, if any there be, in
 monies, securities, and other effects, is actually in the treasury,
 or deposited as by law directed, the bond given by such
 treasurer and his sureties shall be discharged, and delivered
 up to be cancelled.

1 R. L., 472, § 6.

§ 5. The treasurer shall pay all warrants drawn by the Payments.
 comptroller on the treasury; and no monies shall be paid out
 of the treasury, except on the warrant of the comptroller.

1 R. L., 477, § 9.

TITLE 4.
Annual
report.

§ 6. The treasurer shall exhibit to the legislature, at its annual meeting, an exact statement of the balance in the treasury to the credit of the people of this state; with a summary of the receipts and payments of the treasury during the preceding year.

1 R. L., 473, § 5.

Deposits.

§ 7. The treasurer shall deposit all monies that shall come to his hands on account of this state, except such as belong to the canal fund, within three days after receiving the same, in such bank or banks in the city of Albany, as in the opinion of the comptroller and treasurer, shall be secure, and pay the highest rate of interest to the state for such deposit.

Id.

§ 8. All monies directed by law to be deposited in the Manhattan bank, in the city of New-York, to the credit of the treasurer, shall remain in said bank, subject to be drawn for as the same may be required.

Id.

§ 9. The comptroller may transfer the deposits in the Manhattan bank from time to time to the bank or banks in the city of Albany, in which the monies belonging to this state shall be deposited, pursuant to the foregoing seventh section of this Title, so often as it will be for the interest of the state to transfer such deposits; but the comptroller may continue such deposits in the Manhattan bank, if the said bank shall pay a rate of interest to the state for such deposits, equal to that paid by the bank or banks in Albany, in which the state deposits shall be made.

[1785]

Bank ac-
counts.

§ 10. The monies so deposited shall be placed to the account of the treasurer; and he shall keep a bank book, in which shall be entered his account of deposits in, and monies drawn from, the banks in which such deposits shall be made.

1 R. L., 473, § 3.

Monthly
statements.

§ 11. The said banks shall respectively transmit to the comptroller, monthly statements of the monies which shall be received and paid by them on account of the treasury.

Laws of 1821, 162, § 2.

Checks.

§ 12. The treasurer shall not draw any monies from such banks, unless by checks subscribed by him as treasurer, and countersigned by the comptroller; and no monies shall be paid by either of the said banks, on account of the treasury, except upon such checks.

Laws of 1821, 162, § 2; 1 R. L., 473, § 3.

Bank book
to be ex-
hibited.

§ 13. The treasurer shall exhibit his bank book to the comptroller for his inspection, on the first Tuesday in every month, and oftener, if required.

Laws of 1821, 162, § 2; 1 R. L., 473, § 3.

Accounts
when closed
and ex-
amined.

§ 14. The accounts of the treasury shall be annually closed on the last day of November, and shall be examined in the month of December, in each year, by a committee of not less than three nor more than five persons, to be appointed by

concurrent resolutions of the two houses of the legislature, at the session previous to the month of December in each year.

TITLE 5

Concurrent resolutions of March 31, 1798, and February 23, 1810; Laws of 1821, 162.

§ 15. Such committee shall examine the accounts and vouchers relating to all monies received into and paid out of the treasury, during the year ending on the last day of November preceding such examination; and shall certify and report to the legislature at its next session, the amount of monies received into the treasury during such year; the amount of monies paid out of it during the same period by virtue of warrants drawn on the treasury by the comptroller; the amount of monies received by the treasurer who shall be in office at the time of such examination, when he entered on the execution of the duties of his office; and the balance in the treasury on the last day of November preceding such examination.

Duty of
examining
committee.

Concurrent resolutions of March 31, 1798, and February 23, 1810; Laws of 1821, 162.

§ 16. Such committee shall also compare the warrants m. drawn by the comptroller on the treasury, during the year ending on the said last day of November preceding, with the several laws under which the same shall purport to have been drawn, and shall in like manner certify and report whether the comptroller had power to draw such warrants; and if any shall be found, which in their opinion he had no power to draw, they shall specify the same in their report, with their reasons for such opinion.

§ 17. The major part of the members of such committee may perform all the duties required by law of such committee. [179] Ib.

§ 18. Each member of such committee shall receive a compensation of three dollars, for every day during which he shall be employed in the execution of the duties enjoined in the foregoing sections, to be paid out of the treasury. Compensation.

TITLE V.

OF THE ATTORNEY-GENERAL.

- Sec. 1. To defend and prosecute all suits in which state is interested.
2. To receive all costs adjudged to state in any action, and to pay sheriff fees, &c.
 3. When such fees to be paid out of the treasury.
 4. To prepare drafts for comptroller or surveyor-general.
 5. When required he shall attend courts of oyer and terminer.
 6. When he so attends, to be reasonably paid out of treasury.
 7. When to prosecute at request of governor, secretary of state, &c.
 8. To attend trials for corrupting or attempting to corrupt members of legislature, &c.
 9. To attend trial of indictments under laws against duelling.
 10. Actions of ejectment to be prosecuted in supreme court. No such suit to be commenced for benefit of individual, without consent of attorney-general.
 11. No such consent to be given, unless individual files security for costs.
 12. Defendant in any ejectment in which people are interested, to recover costs.
 13. Where one person is indebted to state on different mortgages, &c., but one suit to be commenced.

TITLE 5.

SEC. 14. When separate suits are instituted, attorney-general to consolidate them.

15. Debts, &c., received by attorney-general, to be paid into treasury.

16. Attorney-general not to act as attorney in private suits.

17. To keep register of suits, &c.

General
duty.

§ 1. It shall be the duty of the attorney-general to prosecute and defend all actions, in the event of which, the people of this state shall be interested.

1 R. L., 156, § 3; 347, § 22; 2 Du., 667.

Costs and
fees.

§ 2. In all actions prosecuted or defended by him, in which costs are adjudged to the people of this state, or to any person in whose name such action shall be prosecuted or defended for their benefit, the attorney-general shall be entitled to such costs; and he shall pay the taxable fees of sheriffs, clerks, and witnesses, in all such actions.

1 R. L., 156, § 3; 347, § 23.

When to be
paid out of
treasury.

§ 3. Whenever any such taxable fees so paid by the attorney-general, can not be collected by him of the opposing party, the amount so paid shall be audited by the comptroller, and paid to the attorney-general out of the treasury; and if such fees are subsequently collected of the opposing party, they shall be paid into the treasury.

1 R. L., 156, § 3; 347, § 23.

To prepare
drafts.

[189]

§ 4. The attorney-general, whenever requested by the comptroller or the surveyor-general, shall prepare proper drafts for contracts, obligations, and other instruments which may be wanted for the use of the state.

To attend
courts.

§ 5. Whenever required so to do, by the governor, or by one of the justices of the supreme court, the attorney-general shall attend the courts of oyer and terminer and jail delivery, for the purpose of managing and conducting the suits and prosecutions of the people of this state.

1 R. L., 337, § 7.

Compensa-
tion there-
for.

§ 6. Whenever the attorney-general, in consequence of such a requisition, shall attend a court of oyer and terminer, he shall be entitled to his expenses, and a reasonable compensation for his services. The amount shall be certified by the governor, and paid out of the treasury.

To prose-
cute in cer-
tain cases.

§ 7. It shall be the duty of the attorney-general, at the request of the governor, the secretary of state, the comptroller, the treasurer, or the surveyor-general, to prosecute every person who shall be charged by either of those officers with the commission of an indictable offence in violation of the laws, which such officer is specially required to execute, or in relation to matters connected with his department.

Id.

§ 8. He shall cause all persons who may be indicted, for corrupting or attempting to corrupt any member of the legislature, or any member elect of the senate or assembly, or any commissioner of the land office, to be brought to trial; and to attend in person to the execution of the duties hereby required of him.

2 R. L., 192, § 3.

§ 9. He shall also cause all persons who may be indicted for any offence against the laws for the prevention of duelling, to be brought to trial; and shall attend in person to the discharge of the duties hereby required of him.

2 R. L., 193, § 7.

§ 10. Every action of ejectment already commenced, or hereafter to be commenced, in the name of the people of this state, either by the attorney-general, or with his consent, shall and may be sustained and prosecuted to judgment and execution, in the supreme court of this state, in like manner as if such action had been commenced by an individual; but no such suit shall be commenced for the benefit of an individual, without the consent of the attorney-general.

1 R. L., 485, § 5; 8 B., 194.

§ 11. No such consent shall be given by the attorney-general, unless the individual desirous to prosecute such suit, shall give security to the defendant for the payment of the taxable costs, in case the suit shall be determined in favor of the defendant. The security shall be filed in the office of one of the clerks of the supreme court, and be approved of by the clerk in whose office it shall be filed.

1 R. L., 485, § 5; 8 B., 194.

§ 12. Whenever an action of ejectment shall be brought for the purpose of escheating lands, or otherwise, for the benefit of the people of this state, by the attorney-general, or by the direction of the commissioners of the land-office, and the nominal plaintiff shall fail therein for any cause, or the action shall be discontinued, the defendant shall be entitled to costs in the same manner, and to the same extent, as if such action had been brought by an individual; which costs, upon being duly taxed, shall be paid out of the treasury of this state, on the warrant of the comptroller. [181]

1 R. L., 485, § 6.

§ 13. In all cases where debts are due to the people of this state, by several mortgages, contracts or obligations of the same nature, executed by the same person, only one suit shall be commenced by the attorney-general against the debtor, or his representatives, for the monies so due. When to bring but one suit.

1 R. L., 486, § 10.

§ 14. When the attorney-general shall institute separate actions, in behalf of the people of this state, against several persons, on one mortgage, covenant or agreement, or who claim under the same title, it shall be his duty, when the defendants shall request it, to consent to a consolidation of such actions; and in every such case, there shall be but one taxation of costs against the defendants. When to consolidate suits.

1 R. L., 486, § 11.

§ 15. All monies received by the attorney-general, for debts due or penalties forfeited to the people of this state, shall be To pay monies received.

TITLE 6
To prosecute in certain cases.

Ejectments brought by him.

TITLE 6.

paid by him, immediately after the receipt thereof, into the treasury.

Not to act
in private
suits.

§ 16. The attorney-general shall not act as attorney in any private suit, unless the people of this state shall be interested in the event thereof.

1 R. L., 418, § 10.

Register.

§ 17. The attorney-general shall keep, in proper books to be provided for that purpose, at the expense of the state, a register of all actions and demands prosecuted or defended by him in behalf of the people of this state, and of all proceedings had in relation thereto: and shall deliver the same to his successor in office.

TITLE VI.

OF THE SURVEYOR-GENERAL.

- SEC. 1. To superintend surveys and sales of lands belonging to state.
 2. To keep in his office a map of state.
 3. When he may order a special survey of the bounds of a town.
 4. If supervisor of town neglect to make such survey, to be prosecuted.
 5. In case of disputes between towns, as to bounds, surveyor-general to determine.
 6. Determination to be filed in secretary's office.
 7. Surveyor-general to account with comptroller for monies received by him.

[1899]

General
duties.

§ 1. It shall be the duty of the surveyor-general, to superintend the surveys and sales of lands belonging to the people of this state, in the mode required by law, and according to the directions of the commissioners of the land-office, where such directions shall have been given.

Map.

§ 2. He shall retain in his office a map of this state, and shall, from time to time, delineate thereon the bounds of all towns or counties erected or altered by the legislature.

May require
survey of
towns.

§ 3. Whenever the bounds of a town already erected, or that may hereafter be erected, or altered, shall appear to be so described in the act erecting or altering the same, that they cannot be delineated by the surveyor-general, on the map of this state, without a survey specially made for that purpose, he shall direct the supervisor of such town, to cause such survey to be made, and to transmit the same to the surveyor-general's office.

1 R. L., 483, § 3; 2 R. L., 136, § 31.

D.

§ 4. In case of the refusal or neglect of any supervisor to perform the duties so enjoined on him, the surveyor-general shall give notice thereof to the attorney-general, to the end that he may prosecute such delinquent supervisor for the penalty imposed by law; which penalty, when recovered, shall be paid to the surveyor-general, and be by him applied to the making of a map of such town.

1 R. L., 483, § 4.

Disputes
town lines.

§ 5. Whenever a dispute shall arise between the officers of two or more towns, respecting the bounds of either of such

towns, on the same being represented to the surveyor-general, he shall hear the allegations and proofs of the parties, and if necessary, shall direct a survey to be made, and shall determine such dispute.

§ 6. Such determination shall be filed in the office of the secretary of state, and shall be conclusive upon the subject, until the legislature shall, by law, otherwise direct. Determination to be filed.

§ 7. He shall, from time to time, account with the comptroller for all monies received by him, in behalf of the state, or from the treasury. To account.

1 R. L., 483, § 6.

TITLE VII.

OF THE STATE PRINTER.

Sec. 1. To print each session the journals of each house.

2. To be delivered to clerks of senate and assembly, and secretary of state.

3. To print copies of all documents ordered by either house to be printed.

4. All printing required by law for state and for the legislature, to be done by him.

5. He shall print a state paper in Albany.

6. To publish in such paper certified copies of laws, when directed.

7. Proof copy of every such law to be revised by secretary.

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8. Laws so published may be read in evidence from paper.

9. To publish all notices required by law to be printed in state paper.

10. To print as many copies of laws as secretary shall direct.

11. To deliver them to secretary, bound in boards; and when.

12. Laws in volume printed by state printer, evidence.

13. Compensation of state printer.

§ 1. It shall be the duty of the state printer to print, during each session of the legislature, three hundred and twelve copies of the journals of each house, as the same shall be, from time to time, delivered to him by the clerks of the senate and assembly. To print journals.

§ 2. Twelve copies shall be delivered by him in sheets, as they are printed, to the clerks of the senate and assembly, for the use of their respective houses; and the remaining copies stitched, covered and bound in boards, with such indexes and appendixes printed by him, as shall be furnished to him for that purpose by the clerk of each house, shall be delivered by him, as soon as may be, after the close of each session, to the secretary of state. Disposition thereof.

§ 3. He shall also print, for the use of the members of the legislature, during its session, two hundred and fifty copies of every bill, report, memorial or other document, the printing of which shall be ordered by either house; and where an extra number of copies shall be ordered, he shall, in like manner print the same. The copies so printed shall be delivered by him, to the clerks of the respective houses. Printing for the legislature.

§ 4. All printing required by law, or by any concurrent resolution of the senate and assembly, to be done for this state, or for either of the executive officers thereof, named in this Chapter, shall be executed by the state printer, unless otherwise specially provided by law. Certain printing to be done by him.

1 R. L., 481, § 26.

TITLE 7.
To print
state paper.

§ 5. He shall print, in the city of Albany, a newspaper, which shall be deemed the state paper, whenever such paper is or shall be referred to in the laws of this state; and such paper shall be published daily, or weekly, or semi-weekly, at his discretion.

To publish
laws there-
in.

§ 6. He shall publish forthwith in such paper, every certified copy of a law which shall be delivered to him for that purpose, by the secretary of state.

Id.

§ 7. A proof copy of every law so published, shall be furnished by him to the secretary of state, to be by him revised and corrected.

Laws may
be read
therefrom.

[1864]

§ 8. Every law so published by him, may be read in evidence from the paper in which it shall be contained, in all courts of justice in this state, and in all proceedings before any officer, body, or board, in which it shall be thought necessary to refer thereto, until three months after the close of the session in which it became a law.

To publish
notices.

§ 9. He shall also publish in such paper, all notices and advertisements delivered to him for that purpose, which by law are or shall be required to be printed in the state paper.

Laws in
volumes.

§ 10. He shall print, in volumes of the octavo size, so many copies of the laws of each session, with the concurrent resolutions and indexes that shall be delivered to him for that purpose, by the secretary of state, as shall be annually directed by the secretary, who shall also revise and correct the proof sheets.

1 R. L., 484, § 12; Laws of 1815, 280, § 6.

Id.

§ 11. He shall deliver such copies, bound in boards, to the secretary of state, within one month after the close of the session, in which such laws and concurrent resolutions were passed.

Volumes
evidence.

§ 12. All laws passed by the legislature, may be read in evidence from the volumes printed by the state printer, in all courts of justice in this state, and in all proceedings before any officer, body, or board, in which it shall be thought necessary to refer thereto.

1 R. L., 527, § 32.

Compensa-
tion.

§ 13. The state printer shall continue to receive such compensation for printing, and other services performed by him for this state, as is now allowed to him; and his accounts for such services, shall be audited by the comptroller, and paid out of the treasury: in other cases, he shall receive such compensation, to be paid by the person requiring the service to be performed, as is or shall be allowed by law.

1 R. L., 484, § 12; act of 24th Oct., 1814, chap. 20, § 1; Laws of 1818, p. 535; 1821, p. 59; 249, § 1.

TITLE VIII.

TITLE 2

PROVISIONS RELATING TO TWO OR MORE OF THE EXECUTIVE OFFICERS.

- SEC. 1. Executive officers may administer oaths, and when.
2. Who may extinguish claims on lands sold by state.
 3. Comptroller, &c., may file certificates of invalid sales for quit-rents.
 4. Comptroller thereupon to cancel the sale.
 5. From what fund the monies are to be refunded.
 6. Comptroller and attorney-general may release lands from judgments in favor of state.
 7. Attorney-general may pay off incumbrances upon lands mortgaged to state.
 8. When lands are sold under a judgment, attorney-general may redeem.
 9. Attorney-general or comptroller may acknowledge satisfaction of judgments.
 10. Repealed.
 11. Repealed.
 12. Attorney-general to decide upon conflicting claims to surplus monies.
 13. Comptroller to dispose of bank stock owned by state.
 14. What state officers to attend legislature, and report upon matters referred to them.
 15. Secretary, comptroller and surveyor-general, to file quarterly accounts of receipts.
 16. How comptroller, &c., may seal papers.
 17. Certified copies of papers in the office of comptroller and surveyor-general, evidence.
 18. What duties deputy secretary and deputy comptroller to perform.
 19. Offices to be kept in the public building in Albany.

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§ 1. Whenever the governor, the secretary of state, the comptroller, the deputy comptroller, the treasurer, the attorney-general, and the surveyor-general, shall either of them legally require proof, by affidavit, in any matter belonging to his office, the officer requiring the proof may administer the necessary oath.

Officers may administer certain oaths.

1 R. L., 482, § 2; Laws of 1824, 342, § 6.

§ 2. The comptroller, the attorney-general, and the surveyor-general, or any two of them, with the consent and approbation of the governor, may, from time to time, extinguish all legal claims on lands sold under the authority of this state, or granted, for a valuable consideration, under its authority. The moneys required for such purposes, shall be paid out of the treasury; and in no case shall the sum paid for the extinguishment of any such claim, exceed the principal monies, with interest thereon at the rate of six per cent. per annum, for which the lands, to which the claim relates, shall have been sold by the state.

Extinguishment of claims.

1 R. L., 294, § 7.

§ 3. Whenever it shall appear to the comptroller, the attorney-general and the surveyor-general, or any two of them, that any sales of lands, for arrears of quit-rents, have been improperly made, or that such sales cannot, for any reason, be effectual, it shall be the duty of the officers so acting, or of any two of them, to subscribe a certificate of the fact, and of the reasons why, in their judgments, such sales

Sales for quit-rents, if invalid.

TITLE 2

were improper, or why they cannot be effectual, and to file the same in the office of the comptroller.

Laws of 1828, chap. 297, passed April 21, 1828; Laws of 1826, 327, § 2 and 3.

May be cancelled.

§ 4. Upon the filing of such certificate in his office, it shall be lawful for the comptroller to cancel such sales on his books, and to refund to the purchasers, their heirs or assigns, the amount of the consideration money paid, together with interest, at the rate of six per cent. per annum, from the time of such payment until such sale is vacated, not exceeding six years in the whole.

Laws of 1826, 327, § 2 and 3.

Money, how refunded.

§ 5. Whenever such re-payment shall be made, and whenever monies shall be refunded by the comptroller, for payments erroneously made into the treasury, on account of quit-rents, the one equal moiety thereof shall be paid out of the common school fund, and the other moiety out of the literature fund.

Laws of 1826, 327, § 2 and 3.

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Release of land bound by a judgment.

§ 6. The comptroller, with the consent of the attorney-general, if they shall be satisfied that the interests of the state will not be prejudiced, may release any portion of a real estate, subject to a judgment in favor of the people of this state, from the lien created by such judgment.

Laws of 1819, 317, § 6.

Prior mortgages, when to be paid.

§ 7. Where the attorney-general shall ascertain that lands mortgaged to the people of this state, are incumbered by prior judgments or mortgages, he may, with the advice and consent of the comptroller, discharge such prior incumbrances, and take an assignment thereof to the people of this state; and all sums of money required for such purpose, shall be paid to him out of the treasury.

Laws of 1817, 6, § 3.

Mortgaged lands, when to be redeemed.

§ 8. Whenever any lands which shall have been mortgaged to the people of this state, or purchased for the people on the foreclosure of a mortgage, shall be sold on execution, by virtue of a judgment recovered prior to such mortgage, the attorney-general, with the advice and consent of the comptroller, may redeem such lands, in the same manner as judgment creditors are authorized by law to redeem.

Laws of 1822, 125, § 2.

Satisfaction of judgments to state.

§ 9. The attorney-general and comptroller, or either of them, may acknowledge satisfaction of any judgment in favor of the people of this state, when the same shall have been settled or discharged, either by payment, or by legislative provision; and the clerk of the court in which the judgment was docketed, shall, on filing a satisfaction-piece, acknowledged by them, or either of them, enter satisfaction of record.

1 R. L., 269; Laws of 1822, 126; sec. 10 and 11 repealed by Laws of 1831, ch. 320, § 17.

§ 12. It shall be the duty of the comptroller, where interfering claims to such surplus monies shall be made, to refer such claims to the attorney-general, whose decision as to the rights of the respective claimants, shall be final and conclusive as to any claim against the state.

Laws of 1824, 303, § 2.

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Interfering
claims to
surplus.

§ 13. The comptroller, by and with the advice of the governor, may, from time to time, dispose of any of the bank stock belonging to the state, and apply the proceeds to the credit of the treasury, or invest them in other stocks, as may be judged most expedient.

Laws of 1818, 306, § 15.

Bank stock.

§ 14. It shall be the duty of the secretary of state, the comptroller, the treasurer, the attorney-general, and the surveyor-general, to attend the legislature during their session; and to report on all matters referred to them by the legislature, or by either house.

Officers to
attend leg-
islature.

§ 15. The secretary of state, the comptroller, and the surveyor-general, shall, on the first days of January, April, July and October, in each year, file with the treasurer, an account in writing, of all fees by them respectively received, during the preceding quarter and pay the amount thereof into the treasury.

Quarterly
account of
fees.

2 R. L., 29; 1 R. L., 527, § 1; 530, § 7.

§ 16. In all conveyances and other writings, executed by the comptroller, under his seal of office, and upon all commissions issued, and certificates granted by the secretary of state or the adjutant-general, it shall be lawful to affix the proper seal, by making an impression directly on the paper, which shall be as valid as if made on a wafer, or on wax.

Seals to offi-
cial papers.

Laws of 1822, 285, § 7.

§ 17. Copies of papers deposited or filed in the offices of the comptroller and surveyor-general, certified by the officer in whose office they are deposited, shall, in all cases, be evidence equally and in like manner as the originals.

Copies of
papers
when evi-
dence
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§ 18. The deputy-secretary of state, and the deputy-comptroller, shall each of them perform all the duties attached by law to the office of his principal, during an absence of such principal from the state, or a vacancy in his office.

Deputy
secretary
and deputy
comptrol-
ler.

Laws of 1823, 19.

§ 19. The offices of the secretary of state, comptroller, treasurer, attorney-general and surveyor-general, shall be kept in the state-hall, in the city of Albany.

Offices
where kept.

1 R. L., 472, § 2.

CHAP. IX.

Of the Funds, Revenue, Expenditures and Property of the State; and the Administration thereof.

(Took effect January 1, 1893.)

- TITLE 1.**—Of the general fund, and the expenditures chargeable thereon.
- TITLE 2.**—Of the canal fund, and the administration thereof.
- TITLE 3.**—Of the literature fund.
- TITLE 4.**—Of the common school fund.
- TITLE 5.**—Of the public lands, and the superintendence and disposition thereof.
- TITLE 6.**—Of mortgages to the people of this state, and the foreclosure thereof.
- TITLE 7.**—Of the public buildings and erections.
- TITLE 8.**—Of the state library.
- TITLE 9.**—Of the canals.
- TITLE 10.**—Of the salt springs.
- TITLE 11.**—Of the interest of the state in mines.
- TITLE 12.**—Of escheats.
- TITLE 13.**—Of the recovery of forfeited estates.

TITLE I.**OF THE GENERAL FUND, AND THE EXPENDITURES CHARGEABLE THEREON.**

- SEC. 1.** Designation and description of the general fund.
2. Duties on pedlers to belong to general fund.
 3. Fees of secretary of state, comptroller and surveyor-general.
 4. Monies recovered for certain penalties to go to general fund.
 5. Salaries of officers of government.
 6. Salaries, when and how payable.
 7. Treasurer may retain his salary.
 - 8 & 9. Pay of lieutenant-governor.
 10. Sums allowed for clerk hire, and how and when paid.
 11. Furniture, stationery, &c., of certain officers, to be paid out of the treasury.
 12. Stationery, &c., and postage of adjutant-general and judge-advocate-general.
 13. Rent and taxes of governor's house.
 14. Incidental expenses of the governor.
 15. Allowance to governor, to defray expenses of apprehending criminals.
 16. Additional expenditures chargeable upon general fund.
 17. Deficiency in common school fund, how supplied.

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General fund.

§ 1. The stocks, debts, and other property heretofore known as the general fund of this state, shall continue, together with the increase and revenue thereof, and the additions which may be made thereto, to be known and denominated as the "General Fund."

Duties on pedlers.

§ 2. All monies paid into the treasury for duties imposed upon hawkers, pedlers, and petty chapmen, shall be deemed a part of the general fund.

Fees of certain officers

§ 3. The fees of office which may be received by the secretary of state, the comptroller, and the surveyor-general, shall

be deemed a part of the general fund. The rate of such fees shall be as follows :

1. *Fees of the Secretary of State.*

For entering a caveat, twelve and a half cents,

Secretary's
fees.

Searching the records in his office for any one year, twelve and a half cents, and for every other year in which such search is actually made on request, six cents.

Copies of records, ten cents for each folio containing one hundred words.

Recording, for every folio containing one hundred words, fifteen cents.

Engrossing exemplifications of records, for each folio containing one hundred words, fifteen cents.

Affixing the seal to exemplifications, one dollar.

Each certificate of the secretary, to be read in a court of justice, one dollar.

Every certificate of the secretary, for other purposes, nineteen cents.

For every patent for lands, for a single lot, the sum of one dollar; for each patent for more than one and less than four lots, the sum of one dollar and fifty cents; for each patent for more than three and less than nine lots, the sum of two dollars; for each patent for more than eight lots, the sum of three dollars; and for each patent for lands lying under water, five dollars.

For each license granted to a pedler, hawker, or petty chapman, two dollars.

For recording the depositions of resident aliens fifty cents each; and for a certified copy of each deposition, fifty cents.

2 R. L., 29; Ib., 228, § 2; Laws of 1825, 427, § 3.

2. *Fees of the Comptroller.*

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For opening a new account, for part of the consideration due on any lot or piece of land, or for a discharge for any such part, in cases in which no new account shall have been opened, two dollars.

Comptrol-
ler's fees.

For a deed of lands sold for taxes, containing the description of only one piece, fifty cents; and for every additional piece described in the same deed, ten cents.

1 R. L., 476, § 6; Laws of 1827, 4, § 5.

3. *Fees of the Surveyor-General.*

For filing every paper, six cents.

For all original drafts, twenty-five cents.

For drawing all original papers, for each folio of one hundred words, ten cents; for recording, when requisite, for each folio, ten cents; and for copies of all papers on file, for each folio, ten cents.

Surveyor
general's
fees.

For every search, ten cents.

For copies of maps, such sum as is usually charged for the like business.

For surveys to be performed, at the rate of three dollars for

TITLE 1.

the surveyor, per day, exclusive of the reasonable expenses for the hire of men and horses, and for provisions.

1 R. L., 483, § 5.

Certain penalties.

§ 4. All monies recovered by any public officer, for penalties or forfeitures given by law to the people of this state, and not specially appropriated to any other fund, shall also be deemed a part of the general fund.

Charges on the general fund.
Salaries.

§ 5. There shall be allowed to the several officers of government, and persons hereinafter mentioned, the following annual salaries, to be paid quarterly out of any monies in the treasury belonging to the general fund, and not otherwise specially appropriated by law, that is to say :

1. To the governor, four thousand dollars ; and to his private secretary, six hundred dollars.

2. To the secretary of state, and as superintendent of common schools, one thousand five hundred dollars; and to the deputy-secretary, and as clerk of the commissioners of the land-office, one thousand five hundred dollars.

3. To the comptroller, two thousand five hundred dollars; and to his deputy, one thousand five hundred dollars.

4. To the treasurer, one thousand two hundred and fifty dollars; and to the treasurer's clerk, eight hundred dollars.

5. To the attorney-general, one thousand dollars.

6. To the surveyor-general, eight hundred dollars.

7. To the chancellor, and each of the justices of the supreme court, two thousand dollars.

8. To the chancellor's clerk, six hundred dollars.

[191] 9. To each of the circuit judges, one thousand two hundred and fifty dollars.

10. To the state reporter, and chancery reporter, five hundred dollars each.

11. To the commissary-general, seven hundred dollars.

12. To the adjutant-general, eight hundred dollars.

13. To the judge-advocate general, one hundred and fifty dollars.

14. To the state librarian, three hundred and fifty dollars.

15. To each of the acting canal commissioners, one thousand five hundred dollars.

Compiled from the statutes in force in September, 1827.

When payable.

§ 6. The salaries above specified shall be payable in equal quarterly payments at the treasury, on the first days of January, April, July and October, in every year, and shall be computed as becoming due to the several officers above named, in proportion to the times for which they shall hold their respective offices.

1 R. L., 528, § 1.

Ib., treasurer.

§ 7. The sums which shall from time to time, become due to the treasurer, for his salary, may be retained by him in quarterly payments, on the warrant of the comptroller.

1 R. L., 528, § 1.

§ 8. There shall be allowed and paid to the lieutenant-governor, six dollars for every day's attendance as president of the senate, or president of the court for the trial of impeachments and the correction of errors; or as commissioner of the canal fund, or land-office; but he shall not be entitled to compensation as such commissioner, for attending any meeting of the canal board, or the land-office, held during the session of the senate, or of the court for the trial of impeachments and correction of errors.

Laws of 1823, 419, § 2.

§ 9. The like compensation shall be allowed to the lieutenant-governor, for every twenty miles travelling, in going to and returning from the place of meeting, in the discharge of such duties.

Laws of 1823, 419, § 2.

§ 10. There shall be annually allowed to the several officers herein after named, such sum as shall be actually and necessarily expended in their respective offices for clerk hire, not exceeding the sums herein after named, to be paid quarterly, in the same manner that the salaries of the respective officers are paid.

Clerk hire
of certain
officers.

1. To the secretary of state, eight hundred dollars.
2. To the comptroller, not exceeding six thousand dollars, to be drawn for by him in case he finds it necessary; and he shall report to the legislature each year, the names of the clerks employed by him, and the amount paid to each.
3. To the treasurer, two hundred and fifty dollars.
4. To the attorney-general, six hundred dollars.
5. To the surveyor-general, five hundred and fifty dollars.
6. To the adjutant-general, two hundred dollars.

[1827]

Compiled from statutes in force in Sept., 1827.

§ 11. The expenses of the necessary furniture, stationery, firewood, book-binding, printing, and postage, for the offices of the secretary of state, the comptroller, the treasurer, and the surveyor-general, shall be paid out of the treasury. An account of the items of such expenses shall be annexed to each warrant to be drawn therefor.

Incidental
expenses.

Compiled from statutes in force in Sept., 1827.

§ 12. The expenses of all necessary blanks, blank books and stationery, in the office of the adjutant-general, and of postage on official letters received by the adjutant-general and judge-advocate-general, shall be paid out of the treasury.

Compiled from statutes in force in Sept., 1827.

§ 13. The rent and taxes of the house occupied by the governor of this state, as a residence, shall be paid from time to time, as the same shall become due, out of the treasury.

Compiled from statutes in force in Sept., 1827.

§ 14. There shall be annually paid out of the treasury, to the governor, a sum not exceeding seven hundred and fifty

TITLE 2

dollars, to defray the incidental expenses of administering the government of this state; and he shall account with the comptroller for the expenditure thereof.

Compiled from statutes in force in Sept., 1827.

Incidental
expenses.

§ 15. There shall also be annually paid out of the treasury to the governor, a sum not exceeding two thousand dollars in the whole, to defray such expenses as may from time to time, in his opinion, be necessarily incurred in the apprehension of criminals, and he shall account to the comptroller for the expenditure thereof.

Laws of 1818, 241.

Other
charges.

§ 16. In addition to the salaries and contingent expenses above mentioned, the following expenditures shall be chargeable on, and from time to time be paid out of, the general fund.

1. The compensation of the members and officers of the legislature, including the contingent expenses of both houses.

2. The compensation of the members of the court for the trial of impeachments and the correction of errors, including the contingent expenses of such court.

3. The monies required for the support of state prisons.

4. The annuities payable to Indians, and all expenses relating to Indian affairs.

5. The compensation of sheriffs for services not chargeable to the counties.

6. The expenses of all printing done for the state.

7. The compensation of brigade inspectors, and the expenses of the commissary's department, and all other expenses connected with the militia and the public defence.

[193] 8. All monies directed by law to be paid out of the treasury, and not specially charged on any other fund.

1b.

§ 17. Whenever the revenue of the common school fund, shall be insufficient to satisfy the annual appropriation of one hundred thousand dollars, the deficiency shall be supplied and paid from the general fund.

Laws of 1826, 355, § 4.

TITLE II.**OF THE CANAL FUND, AND THE ADMINISTRATION THEREOF.**

Sec. 1. Designation and description of the canal fund.

2 & 3. Certain parts of the fund inviolably appropriated, &c.

4. Fund, by whom superintended.

5. Duties of commissioners of canal fund.

6. Advances for repairs.

7 & 8. Surplus revenues of the fund, how to be invested.

9. Commissioners, when authorized to borrow money, to give notice.

10. Commissioners may indemnify persons in employ of the state, under canal laws.

11. To inquire into circumstances before any such claim is allowed.

12. Commissioners may direct attorney-general or employ counsel, to defend or prosecute suits brought under canal laws.

13. Charges on the canal fund enumerated.

§ 1. The canal fund shall continue to consist of the following property :

1. Lands granted for the construction of the canals, by the state, by companies, or by individuals, and remaining unsold.
2. Debts due for such portions of said lands, as have heretofore been sold.
3. The tolls and commutation monies, imposed on and collected from such navigable communications belonging to the state, as now are or hereafter shall be made and completed.
4. Duties on the manufacture of all salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen.
5. Proceeds of all duties on goods sold at auction, excepting therefrom the annual sum of thirty-three thousand five hundred dollars, otherwise appropriated by the said act.
6. All monies received for the sale or use of the surplus waters of any canal belonging to this state ; and,
7. All monies recovered in suits for penalties or damages, instituted under the canal laws.

§ 2. Such parts of the said fund as are designated in the tenth section of the seventh article of the constitution of this state, are to be and remain inviolably appropriated and applied to the completion of the navigable communications specified in that section, and to the payment of the interest, and the reimbursement of the capital of the money borrowed to make and complete the same. And rates of toll not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, are to be imposed on and collected from all parts of such navigable communications.

Certain
funds
pledged.

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§ 3. Neither such rates of toll, nor the duties on the manufacture of salt, nor the duties on goods sold at auction, can be reduced or diverted at any time, before the full and complete payment of the principal and interest of the money borrowed as aforesaid.

§ 4. The canal fund shall continue to be superintended and managed by the commissioners of the canal fund, a majority of whom, including the comptroller, shall be a quorum for the transaction of business ; but the care and disposition of all lands belonging to the canal fund, shall be vested in the commissioners of the land-office.

Superin-
tendents of
the fund.

Laws of 1817, 301, § 1.

§ 5. It shall be the duty of the commissioners of the canal fund, to manage, to the best advantage, all things belonging to that fund ; to recommend from time to time to the legislature, the adoption of such measures as may be thought proper by them for the improvement of the fund ; and to report to the legislature, at the opening of every session thereof, the state of the fund.

Their
duties.

Laws of 1817, 301, § 1.

TITLE 1
Advances
for repairs.

§ 6. The commissioners shall advance to each of the superintendents of canal repairs, such sums as in their opinion shall be required in the execution of their duties, not exceeding at any one time, five thousand dollars.

Laws of 1827, 223, § 13.

Application
of surplus
revenue.

§ 7. The commissioners of the canal fund shall, from time to time, apply the surplus revenues of the canal fund, after paying the interest of the canal debt, to the purchase of canal stock of this state, if in their opinion such stock can be purchased upon advantageous terms. And the certificates of stock so purchased shall be cancelled.

Laws of 1826, 361, § 21 & 22.

Id.

§ 8. Whenever the commissioners shall be unable to purchase canal stock upon terms by them deemed advantageous to the state, they may invest such surplus revenues in the public stocks of the United States, or any public stock created by the corporation of the city of New-York or Albany, and from time to time may re-invest the interest or dividends upon such investments, as part of such surplus revenues.

Laws of 1826, 361, § 23.

Notice for
loans.

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§ 9. Whenever the commissioners of the canal fund shall be authorised to borrow money upon the credit of the state, they shall, previous to any loan to be made by them, give notice that sealed proposals will be received to a given day, and until a certain hour of such day, to be named in the notice; which notice shall be published in two newspapers, in each of the cities of New-York and Albany, and continued for two weeks daily in the New-York papers, and at least twice a week in the Albany papers. And the proposals received by them shall not be opened, until the hour specified in such notice.

Laws of 1821, 26, § 7.

Power to al-
low certain
claims.

§ 10. The commissioners of the canal fund shall have power to allow all claims for monies paid by the canal commissioners, or any one of them, or by an engineer or agent in their employment, or by any superintendent or toll collector, for judgments recovered against them or either of them, in any suit instituted for any act done by them, under the canal laws of this state, or for costs and expenses incurred in any such suit, or in any suit instituted by them or either of them, under such laws.

Laws of 1827, 222, § 8.

Proceed-
ings.

§ 11. The commissioners of the canal fund, before they shall allow any such claim, shall examine into the circumstances under which such costs shall have been incurred, or judgments recovered; and shall allow such claim, or such part thereof as they shall deem to be reasonable, if they shall be satisfied that such commissioners, or other officers making such claims, have been subjected to such costs, expenses or

judgments, while acting in good faith in the discharge of their duty, under any law of this state.

Laws of 1827, 222, § 8.

§ 12. The commissioners of the canal fund shall have power, in their discretion, to direct the attorney-general, or to employ other counsel, to take all necessary steps in defending the interest of the state, in all suits and proceedings before the supreme court, or any other court, which may arise under the laws respecting the canals, or from the appraisement of damages thereon.

To defend suits.

Laws of 1827, 222, § 9.

§ 13. All monies expended in the construction, reparation or improvement of the canals now authorised by law, or allowed or expended by the commissioners of the canal fund under this Title; or expended by the commissioners of the canal fund, the canal commissioners, or other officers or agents employed on such canals, pursuant to any law of this state, together with the compensation to such officers respectively, (including the salaries of the canal commissioners) shall be charged to the canal fund; and the comptroller shall also charge to the canal fund, from time to time, so much for the services of the clerks in his office, devoted to the accounts and revenues of the canals, as in his opinion shall be just and proper.

Charges on the canal fund.

Laws of 1827, 4, § 3.

TITLE III.

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OF THE LITERATURE FUND.

Sec. 1. Designation of the fund.

2. Capital of literature fund, how to be invested.

§ 1. That portion of the funds of this state, heretofore known and distinguished as the "Literature Fund," shall continue to be known and distinguished by that name.

Literature fund.

Laws of 1827, 237, § 3.

§ 2. Whenever any money belonging to the capital of the literature fund, shall be paid into the treasury, the comptroller shall invest the same in such of the public stocks, or subscribe the same to such of the public loans of this state, as the regents of the university shall deem most advantageous.

Principal how invested.

TITLE IV.

OF THE COMMON SCHOOL FUND.

Sec. 1. Designation and description of the fund.

2. Monies to be annually distributed as the revenue.

3. When, how, and to whom such monies payable.

4. Capital of the school fund, how to be invested.

5. Duty of public agents to receive such investments, and upon what terms.

6. Care of lands belonging to school fund, vested in commissioners of land-office.

§ 1. The proceeds of all lands which belonged to the state

Common school fund.

TITLE 4

on the first day of January, in the year one thousand eight hundred and twenty-three (except such parts thereof as may have been or may be reserved or appropriated to public use or ceded to the United States,) together with the fund denominated the common school fund, are to be and remain a perpetual fund, the interest of which is to be inviolably appropriated and applied to the support of common schools throughout this state.

Distribu-
tion of its
revenue.

§ 2. There shall be annually distributed as the revenue of the common school fund, and according to the apportionment of the superintendent of common schools, then in force, the sum of one hundred thousand dollars, for the support and encouragement of common schools, to be denominated "School Monies;" and, as often as such revenue shall be increased by the sum of ten thousand dollars, such increase shall be added to the sum to be distributed.

Laws of 1826, 350; 1819, 187, § 3.

When pay-
ble.

§ 3. The monies so to be distributed, shall be payable on the warrant of the comptroller, on the first day of February in every year, to the treasurers of the several counties, and to the chamberlain of the city of New York.

Laws of 1824, 337, § 1.

Capital how
invested.

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§ 4. Whenever there shall be in the treasury any money belonging to the capital of the school fund, it shall be the duty of the comptroller to invest the same in such of the public stocks of this state, of the United States, or of the cities of New-York and Albany, as the comptroller and the superintendent of common schools shall deem most advantageous to the school fund; or if they shall deem it more for the interest of such fund, the comptroller may invest such money in the next loan thereafter to be made by the commissioners of the canal fund, or by any other public agent, who may be authorised to borrow monies and issue certificates of stock upon the credit of the state.

Laws of 1823, 47, § 2.

Id.

§ 5. It shall be the duty of such commissioners or public agent, to receive all investments of any portion of the capital of the school fund, at the same rate and on the most favorable terms to the school fund, upon which money shall be borrowed and stock issued at the time of such investment; and certificates of stock shall be taken for such investments in the name of the comptroller, in trust for the school fund, which trust shall be specially expressed in every certificate.

Laws of 1823, 47, § 2.

Care of the
lands.

§ 6. The care and disposition of all lands belonging to the school fund, shall be vested in the commissioners of the land-office.

TITLE V.**ART. 1.****OF THE PUBLIC LANDS, AND THE SUPERINTENDENCE AND DISPOSITION THEREOF.**

- ART. 1.** — Of the general powers and duties of the commissioners of the land-office.
- ART. 2.** — Of the survey and appraisement of unappropriated lands, previous to sale.
- ART. 3.** — Of the sale of the unappropriated lands, and the execution of grants therefor.
- ART. 4.** — Of grants of land under water.
- ART. 5.** — Regulations concerning the protection of the public lands, and the payment of charges thereon.
- ART. 6.** — Of the duties of the commissioners of the land-office, in regard to lands belonging to the canal fund.

ARTICLE FIRST.**OF THE GENERAL POWERS AND DUTIES OF THE COMMISSIONERS OF THE LAND-OFFICE.**

- Sec. 1.** To superintend the public lands, and to direct the granting thereof.
2. What number may execute the powers of the board.
 3. Secretary of state to convene commissioners; who to preside at meeting.
 4. Deputy-secretary to be clerk; his duty.
 5. To prescribe form of letters patent; reservation of gold and silver mines.
 6. To make compensation for failure of title to lands purchased of state.
 7. May lease improved lands of state.
 8. Expenses incurred by commissioners to be paid out of treasury.

§ 1. The commissioners of the land-office shall have the general care and superintendence of all lands belonging to this state, the superintendence whereof is not vested in some other officer or board. They shall also have power to direct the granting of the unappropriated lands of the state, according to the directions from time to time to be prescribed by law.

To superintend public lands.

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1 R. L., 292, § 1; 5 Cow., 460.

§ 2. All the powers now vested or hereafter to be vested in the commissioners, may be executed by a majority of the board, or by any three of them, if the surveyor-general be one of such three.

Majority to act.

1 R. L., 292, § 1.

§ 3. The secretary of state shall convene the commissioners, as often as may be necessary for the transaction of business. At every meeting, the lieutenant-governor, if present, shall preside; if he be absent, the members present shall choose their chairman.

How convened.

1 R. L., 292, § 2; Laws of 1815, 10, § 5.

§ 4. The deputy-secretary of state shall be clerk to the commissioners, and shall enter the minutes of their proceedings in a book to be provided for the purpose, which shall be kept in the secretary's office, in proper order, with the papers and documents which may be presented to the board.

Their clerk, his duties.

1 R. L., 292, § 2; Laws of 1815, 10, § 5.

**TITLE 5.
Patents.**

§ 5. All letters patent hereafter to be granted, shall be in such form as the commissioners shall direct, and shall contain an exception and reservation to the people of this state, of all gold and silver mines.

1 R. L., 293, § 5.

To refund monies in certain cases.

[See § 2,
Title 8, ch.
8, p. 126.]

§ 6. Whenever the title of the people of this state, to lands granted under its authority shall fail, and a legal claim for compensation, on account of such failure, shall be preferred by any person entitled thereto, it shall be the duty of the commissioners to direct the payment of the original purchase monies, which may have been paid to the state by such person, with interest at the rate of six per cent. from the time of such payment, to be paid out of the treasury, on the warrant of the comptroller.

1 R. L., 293, § 6; Laws of 1826, 326, § 1.

To lease certain lands.

§ 7. The commissioners may, from time to time, lease for terms not exceeding one year, and until the same can be disposed of as required by law, all such lands belonging to the state as have improvements on them, and which are not appropriated to any immediate use; and such leases shall contain proper covenants to guard against trespasses and waste.

Laws of 1819, 300, § 3.

Expenses how paid.

§ 8. All expenses necessarily incurred by the commissioners, in the discharge of the duties that are or shall be enjoined on them by law, shall be audited by the comptroller, and paid out of the treasury.

Laws of 1819, 301, § 4.

ARTICLE SECOND.

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**OF THE SURVEY AND APPRAISEMENT OF UNAPPROPRIATED LANDS,
PREVIOUS TO SALE.**

SEC. 9. To direct surveys of unappropriated lands.

10. Estimate of expenses to be certified to the comptroller.
11. And to be paid by him.
12. Surveyors to appraise each lot.
13. Appraisal, returns, &c., to be delivered to surveyor-general, and copy to be filed.
14. Surveyors to take an oath.
15. If they make false return, guilty of perjury.
16. Surveyor-general to make maps of each tract surveyed.
17. Maps to be open to public inspection.

Surveys when to be made.

§ 9. The commissioners of the land-office may, from time to time, as often as they shall judge it to be for the interest of the state, direct the surveyor-general to cause actual surveys to be made of such parts of the unappropriated lands of this state as they shall direct.

1 R. L., 295, § 11.

Proceedings.

§ 10. Whenever it shall become the duty of the surveyor-general to make a survey and sale of public lands, he shall

obtain, from the commissioners of the land-office, a certificate to be directed to the comptroller, containing their estimate of the expenses of such survey or sale.

1 R. L., 295, § 19.

§ 11. He shall deliver such certificate to the comptroller; and the sum at which such expenses are estimated therein, shall be paid to him out of the treasury.

Proceed-
ings.

1 R. L., 295, § 19.

§ 12. It shall be the duty of the surveyors who shall be appointed by the surveyor-general to survey any unappropriated lands, in order to a sale thereof, to appraise the value of each lot, exclusive of the improvements thereon, exceeding the value of twenty-five dollars.

Lots to be
appraised.

1 R. L., 295, § 13.

§ 13. They shall deliver such appraisement, together with the returns of such surveys, and maps of the lots so surveyed, and a field-book, containing an account of the soil, timber, and local advantages of each lot, to the surveyor-general; who shall cause a copy to be filed in the secretary's office.

1 R. L., 295, § 13.

§ 14. Every surveyor who shall be employed by the surveyor-general, to survey any unappropriated lands, and to appraise the value thereof, shall, before he proceeds to make such survey and appraisement, take and subscribe the oath prescribed by the constitution, and shall file the said oath, certified by the person before whom the same shall be taken, in the surveyor-general's office.

Oath of sur-
veyors.

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1 R. L., 295, § 23.

§ 15. In case any such surveyor shall wilfully and knowingly make a false return of the survey by him made, or shall wilfully and knowingly return an appraisal of the lands so surveyed, to the surveyor-general, variant from the true value thereof, or without having personally surveyed and explored the same, he shall be deemed guilty of wilful and corrupt perjury.

Penalty for
false return.

1 R. L., 295, § 3.

§ 16. The surveyor-general shall make, or cause to be made, a map of each of the tracts so directed to be surveyed, distinguishing on such maps the town and county in which the lots are situate; which maps shall be deposited in his office, and a copy thereof, to be furnished by him, shall also be deposited in the office of the secretary of state.

Maps to be
made, &c.

1 R. L., 295, § 14.

§ 17. Such maps and copies shall be open to the inspection of every person, during the stated hours of doing business in the said offices, until the lands described thereon shall be sold.

To be
public.

1 R. L., 295, § 14.

ARTICLE THIRD.

OF THE SALE OF THE UNAPPROPRIATED LANDS, AND THE EXECUTION OF GRANTS THEREFOR.

SEC. 18. Commissioners may direct sales of unappropriated lands.

19. To fix the minimum price, and to designate newspapers for the publication of notices.
20. To prescribe the amount of purchase money to be paid down.
21. All sales by surveyor-general, to be in the city of Albany.
22. To give eight weeks' notice of time, &c., of sale.
23. Conditions of sale.
24. Penalty on purchaser for refusing to comply with conditions of sale.
25. If conditions complied with, surveyor-general to give purchaser certificate.
26. Rights acquired by purchaser, under a certificate.
27. Purchasers when entitled to letters patent.
28. If certificate is lost or withheld, patent may be issued.
29. When persons die, having pre-emptive right to lands, commissioners to decide on claims thereto.
30. To establish rules to prevent frauds under two last sections.
31. Lots not sold at public sale may be sold to first applicant.
32. Duty of applicant, number of lots which he may take.
33. If no application for unsold lots, minimum price may be reduced.
34. Occupant of certain lands, if sold, to recover value of improvements.
35. When surveyor-general to appoint appraisers of improvements.
36. What deductions appraisers to make.
37. Expense of appraisal how paid.
38. Patent not to issue until value of improvements paid.
39. The five preceding sections not to extend to certain lands.
40. Person entitled to grant, dying before it issues, his heirs or devisees entitled to it.
41. In case consideration is not paid, heirs or devisees to execute security therefor.
42. If heirs, &c., are not of full age, to open account with them.
43. If account be paid, land to be granted; if not, to be sold at auction.
44. Persons entitled to a grant, to apply within twelve months.
45. If not so applied for, land to be sold.
46. If default be made in payment, commissioners may order land resold.
47. In what cases surveyor-general to bid in lands sold for the purchase monies.
48. To sell lands so purchased, to applicant, giving preference to last owner.
49. If such lands are newly appraised, to be sold at appraised value.
50. Lands purchased by the attorney-general, to be sold by surveyor-general.
51. Also, to sell lands purchased by commissioners of loans, under the act of 1808.
52. If such re-sale be ordered, notice to be given to occupant to remove.
53. Proceedings for the removal of occupant; duty and powers of sheriff.
54. If person removed return without permission, how dealt with, and penalty.
55. Fees of judge and sheriff.
56. Upon a re-sale of lands, bonds to be delivered up and cancelled.
57. If lands bought for the state, on a re-sale, commissioners to direct terms of sale.
58. When commissioners to fix time for performance of conditions of a grant.
59. Notice of time so fixed, how given.
60. If conditions not performed, grant forfeited.
- 61 & 62. Terms on which lands in 4th senate district may be sold.
63. Liabilities and duties of purchasers thereof.
64. Duties of assessors in regard to such lands.
65. Attorney-general to cause partition to be made of lands held in common.
66. Lands when to be deemed unappropriated lands.

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Lands when
to be sold.

§ 18. The commissioners of the land-office may from time to time, direct the surveyor-general to sell the unappropriated lands belonging to this state, and not otherwise directed to

be disposed of, at public auction, in such parcels as they shall deem most for the interest of the state, and for the promotion of the settlement thereof; but not more than twenty thousand acres shall be sold at any one auction, and each lot shall be separately exposed to sale.

1 R. L., 295, § 12.

§ 19. The commissioners shall, previous to every sale, furnish the surveyor-general with a statement of the price of each lot, below which it shall not be sold; and they shall also designate the newspapers in which the surveyor-general shall cause the notices of sale to be published; but they shall in all cases designate at least one newspaper published in the county where the lands to be sold are situated; or if there be no newspaper therein, then they shall designate at least one newspaper that shall be published nearest to such lands.

1 R. L., 295, § 13; Laws of 1826, 327, § 5.

§ 20. The commissioners shall also, previous to every sale, prescribe the amount of purchase money to be paid at the time of sale to the surveyor-general. In fixing this amount, they shall have reference to the value and situation of the lands and the timber thereon, and it shall in no case be less than twenty-five per cent. nor more than seventy-five per cent. of the purchase money.

Laws of 1826, 354, § 4.

§ 21. All public sales of lands belonging to the people of this state, to be made by the surveyor-general, shall be held by him in the city of Albany, unless he shall be otherwise directed by the commissioners of the land-office.

1 R. L., § 22.

§ 22. He shall give eight weeks previous notice of the time, place, and conditions of such sale to be published in such newspapers as the said commissioners shall have selected and prescribed.

Laws of 1826, 354, § 15; 327, § 5.

§ 23. Within forty-eight hours after each sale, the purchaser of each tract shall pay to the surveyor-general the first payment required thereon, and execute a penal obligation conditioned for the payment of the residue of the purchase money to the people of the state of New-York, in six equal annual payments, with interest at the rate of six per cent.

1 R. L., 296, § 16 & 18.

§ 24. If any purchaser shall refuse or neglect to make such payment, and to deliver such obligation to the surveyor-general as aforesaid, he shall, for every such refusal or neglect, forfeit the sum of fifty dollars for each lot so by him purchased, to be recovered with costs of suit by the surveyor-general.

1 R. L., 296, § 16 & 18.

§ 25. The surveyor-general, on the delivery to him of such obligation, and on the receipt of such payment, shall give

TITLE 5.

such purchaser a certificate containing the name of the purchaser, a description of the land purchased, the sum paid, and the sum remaining due thereon; and shall deliver such obligation to the comptroller.

1 R. L., 296, § 16 & 18.

Rights
acquired
under it.

§ 26. The certificate of sale given by the surveyor-general, for any lands that have been or may be sold by him, shall not be deemed to confer upon the purchaser, any right to cut down or destroy any kind of wood or timber standing or growing upon such land, unless such right shall be expressly granted by the certificate; but where a right of entering into the possession of any land so sold, shall be vested in the purchaser by the certificate, nothing herein contained shall prevent such purchaser from actually using and applying any wood or timber on the land, to the erection of fences or buildings thereon; nor from using the necessary firewood growing thereon, in his family; nor from actually and fairly improving any such land for the purposes of cultivation.

Laws of 1826, 210, § 4.

Patents
when to
issue.

§ 27. Whenever any purchaser at a sale made by the surveyor-general, or the representatives or assigns of such purchaser, shall produce to the commissioners, the surveyor-general's certificate, with a receipt of the treasurer endorsed thereon, for the whole of the purchase money due thereon, it shall be the duty of the comptroller to cancel the obligation executed by such purchaser on the sale, and letters patent for the lands described in the certificate shall be issued.

1 R. L., 296, § 16.

Upon certi-
ficate being
lost, &c.

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§ 28. Whenever any such certificate shall be lost or wrongfully withheld by any person from the owner thereof, the commissioners may receive evidence of such loss or wrongful detention; and on satisfactory proof of the fact, may issue a patent to such person as shall appear to them to be the proprietor of the land described in the original certificate.

Laws of 1814, 21, § 2 & 3.

Upon death
of pur-
chaser.

§ 29. Whenever any person shall die, possessed of lands to which he had, under any law of this state, a pre-emptive right, the commissioners may hear and determine the claims of all persons who may claim to be entitled, in whole or in part, to such pre-emptive right; and on such determination, the person or persons to whom any such pre-emptive right, in whole or in part, shall be awarded, shall be entitled to all the rights and privileges, and be subject to all the restrictions and liabilities, of other purchasers of unappropriated lands.

Laws of 1814, 21, § 2 & 3.

Rules to
prevent
fraud.

§ 30. The commissioners shall have power to establish such rules, as in their opinion may be proper, to prevent fraudulent applications on false suggestions, under the two preceding sections.

Laws of 1814, 21, § 2 & 3.

§ 31. Whenever the surveyor-general shall have exposed to sale, any lots of the unappropriated lands of this state, pursuant to law, and any of such lots shall remain unsold, the commissioners may direct the surveyor-general to issue certificates for the sale thereof, to such persons respectively, as shall thereafter, first make application for any of the said lots, at the minimum price affixed to them.

1 R. L., 297, § 21.

§ 32. No person shall be considered as an applicant, unless he shall have made the first payment, and executed the obligation required by law; and no one applicant shall be entitled to a grant of more than two lots, except so far as it respects lands in the counties of Saratoga, Washington, Warren, Schenectady, Montgomery, Essex, Clinton and Franklin.

Laws of 1815, 203, § 5.

§ 33. Whenever any lot of the unappropriated lands shall have been put up for sale, by the surveyor-general, and no bid shall be received for the same, and no application be made for the purchase thereof, within a reasonable time, the commissioners may, if in their opinion the minimum price was fixed too high, lessen the same, and direct the surveyor-general again to advertise, and proceed with the sale thereof.

Laws of 1819, 300, § 2.

§ 34. If any tract of land directed to be sold by the commissioners, was occupied on the seventeenth day of February, one thousand eight hundred and nine, and improved to the value of twenty-five dollars, or exceeding that value, the occupant of such improvement shall be entitled to recover from the purchaser, the value thereof, at the time of the sale, to be ascertained by appraisers, one of whom shall be nominated by such occupant, another by the purchaser, and a third, in case of their disagreement, by the other two.

1 R. L., 296, § 17.

§ 35. If either, such occupant, or purchaser, shall refuse or neglect, on the application of the other, to make such nomination, and such neglect or refusal shall be proved to the satisfaction of the surveyor-general, he shall appoint appraisers, to ascertain the value of such improvement.

1 R. L., 296, § 17.

§ 36. It shall be the duty of the appraisers, in making their appraisement, to deduct from the appraised value of such improvements, a reasonable allowance for the use of the lands by the occupant, and also for the deterioration of the value thereof, by his cutting and carrying away timber therefrom, during such occupancy, or causing it to be done.

Laws of 1817, 101, § 4.

§ 37. The purchaser and occupant shall each, pay one half of the expense of every such appraisement.

1 R. L., 296, § 17.

ART. 3.
Lots when
to be sold at
private sale.

Conditions.

If not sold,
price may
be reduced.

Improvements to be
paid for in
certain
cases, on
appraisal.

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Surveyor-general to
appoint
appraisers
in certain
cases.

Duty of
appraisers.

Expense.

TITLE A.
Proof of
payment
before let-
ters issue.

§ 38. The commissioners shall not issue letters patent for any such tracts of land, until satisfactory proof be produced, that the purchaser has, in the manner prescribed in this Title, or otherwise, satisfied the occupant of such tract, for his improvements thereon.

1 R. L., 296, § 17.

Qualifica-
tion of the
five preced-
ing sections

§ 39. The preceding five sections shall not extend to any lands that shall have been previously disposed of by the state, or to which the state shall have acquired title by escheat or confiscation, or by purchase at any sale under a mortgage, judgment, or other security, or by conveyance from any person indebted to it.

Laws of 1828, chapter 321, § 5.

Persons
entitled
to grant,
dying, heirs
&c., to take

§ 40. Whenever any person to whom a grant of land shall have been ordered, pursuant to any law of this state, shall die before the issuing of such grant, the heirs or devisees of every such person, shall be entitled to such grant, upon their complying with the conditions, upon which the grant was to have been made.

Laws of 1815, 201, § 2.

Duty of
heirs, &c.,
if of age.

§ 41. In case any monies shall remain due to the state, on account of the consideration of such lands, and the execution of the securities for the payment of such consideration, or any part of it, shall appear to be one of the conditions required of the grantee, the heirs and devisees, if of age, shall execute them.

Laws of 1815, 201, § 2.

Proceed-
ings when
not of age.

§ 42. If such heirs or devisees are not of full age, the treasurer and comptroller shall open an account with them for such consideration monies, in their respective offices; and the treasurer shall receive payments and give receipts on such accounts.

Laws of 1815, 201, § 2.

When
land to be
granted;
when to be
sold.

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§ 43. When such account shall be paid in full, the grant shall issue to such heirs or devisees; and in case of default in the payment of the monies due on such account, according to the condition of the grant, the commissioners may direct the surveyor-general to sell the land at public auction.

Laws of 1815, 201, § 2.

Applica-
tions when
to be made
by persons
entitled to
grant.

§ 44. Whenever any person shall, by virtue of any special law, become entitled to a grant of any of the unappropriated lands of the people of this state, he shall apply for the grant within twelve months after the passing of the law in his favor, unless it be otherwise provided by such law.

1 R. L., 299, § 28.

Proceed-
ings on
omission.

§ 45. After the expiration of the time above limited, it shall not be lawful for the commissioners to issue such grants; but such land shall be sold, in the manner directed for the sale of unappropriated lands.

1 R. L., 299, § 28.

§ 46. If any one payment, stipulated in any obligation received by the surveyor-general, upon any sale of unappropriated lands, shall remain due one year after the same ought to have been made, the commissioners of the land-office may direct the comptroller to put such obligation in suit, or may direct the surveyor-general to sell again the land, for the payment of which, such obligation shall have been given; and in case of such sale, all previous payments made on account of such land, shall be forfeited to the people of this state.

1 R. L., 299, § 18.

ART. 2.
Land when
to be resold.

§ 47. Whenever the surveyor-general shall sell any lot of land, for the purchase monies due thereon, and the sum due for principal and interest shall not be bid therefor, he shall purchase the same for the state, at the amount so due, with the costs of sale.

When to be
bid in for
the state.

Laws of 1815, 10, § 2.

§ 48. The surveyor-general may sell such lot or lots of land, so purchased by him for the state, to any person who may apply to purchase the same; always giving a preference to the last owner, provided he shall apply to purchase the same within three months after the sale, for the amount at which the same was purchased for the state, on the like terms and conditions, as he is authorised to sell the unappropriated lands of the state.

How to be
resold.

Laws of 1815, 10, § 2.

§ 49. If the commissioners of the land-office shall have directed a new appraisal of such lands, the surveyor-general may sell the same, in the manner authorised in the preceding section, for the prices at which the lots may be respectively appraised.

When to be
sold at ap-
praisal.

Laws of 1815, 10, § 2.

§ 50. All lands which have been, or shall be, purchased for, or on behalf of the state, by the attorney-general pursuant to law, except in cases already provided for by law, shall be sold by the surveyor-general, under the direction of the commissioners of the land-office, in such manner and on such terms and conditions as to them shall appear for the interest of the state.

Certain
lands to be
sold by
surveyor-
general.

Laws of 1815, 10, § 1.

§ 51. It shall also be his duty to sell, under the like directions of the commissioners of the land-office, and on the terms and conditions prescribed by them, all or any of the lands purchased by the commissioners of loans, for the benefit of the people of this state, according to the provisions of "an act authorizing a loan of monies to the citizens of this state," passed April 11th, 1808; and all or any of the lands which have been or may be purchased in behalf of the people of this state, or which have or may become the property of the said people by virtue of the "act authorizing a loan of certain moneys belonging to the United States, deposited with the

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Ib.

TITLE 4.

state of New York for safe keeping," passed April 4, 1837; or by virtue of any other act authorizing any loan of money for the benefit of the people of this state, or of any fund belonging to them.

Laws of 1822, 122, § 3, and Laws of 1841, ch. 92.

Occupants
of lands
resold to be
removed.

§ 52. Whenever the commissioners direct a re-sale, pursuant to the foregoing provisions, they shall cause notice to be given to every occupant of such land to remove therefrom; and in case of his refusal or neglect to comply with such notice, they shall direct the district attorney of the county in which such lands may be situated, to enter a complaint against such occupant, before one of the judges of the court of common pleas of the county.

Laws of 1826, 209, § 2.

Proceed-
ings.

§ 53. The judge shall proceed to examine into the matter; and on proof, by the production of a certificate from the clerk of the commissioners of the land-office, that a re-sale of such land has been duly ordered for default of payment, he shall issue his warrant to the sheriff of the county, commanding him, within ten days after the receipt thereof, to remove such occupant from such lands; and it shall be the duty of the sheriff, within the time specified in the warrant, to remove such person, and for that purpose, he shall have the same powers as in the execution of criminal process.

Laws of 1826, 209, § 2; Laws of 1821, 183, § 1 & 2.

Penalty for
returning
after re-
moval.

§ 54. The sheriff shall retain such warrant in his hands, and if any person so removed shall return, to settle or reside upon such lands, without the consent of the surveyor-general, such person shall be forthwith removed by the sheriff, pursuant to the warrant; and shall also be deemed guilty of a misdemeanor, and be liable, on conviction, to be fined or imprisoned: the fine not to exceed one hundred dollars, and the imprisonment not to exceed thirty days.

Laws of 1826, 209, § 2; Laws of 1821, 183, § 1 & 2.

Fees.

§ 55. Every judge who may issue a warrant under this Title, for issuing such warrant and taking the preliminary proof, shall be entitled to receive a fee of one dollar in each case; and the sheriff, for executing every such warrant, shall be allowed such compensation as the comptroller shall certify to be reasonable; which fees shall be paid out of the treasury.

Laws of 1826, 209, § 2; Laws of 1821, 183, § 1 & 2.

Duty of
commis-
sioners.

§ 56. Whenever the commissioners shall cause such lands to be sold, and such previous payments to be forfeited, they may deliver up and cancel the obligations, given for the lots so ordered to be sold, on the certificates of sale being surrendered.

Laws of 1822, 178.

1b.

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§ 57. If, on any such sale, the surveyor-general shall become the purchaser, in behalf of the state, the commissioners of the land-office shall direct, whether the land purchased, shall be

offered for sale by the surveyor-general, at the price for which the same was purchased by him, or whether a new appraisement shall be made thereof, under his direction.

Laws of 1814, 10, § 2.

§ 58. Whenever grants of land shall have been directed to be made by the commissioners of the land-office, upon the performance of any conditions by the grantees, and no time for the performance of such conditions has been prescribed by law, or by the terms of any agreement on the part of the state, the commissioners may fix a reasonable time for the performance of such conditions, not less than one year.

Time for performing conditions of grant, how fixed.

Laws of 1827, 82, 83, § 1.

§ 59. They shall cause notice of the time so fixed, to be inserted in the state paper for at least six weeks, and shall transmit by mail a copy of such notice to the persons interested.

Notice.

Laws of 1827, 82, 83, § 1.

§ 60. If such conditions shall not be performed within the time limited in such notice, the person or persons entitled to any benefit under such grant, shall forfeit all right and title in the premises.

Forfeiture.

Laws of 1827, 82, 83, § 1.

§ 61. The commissioners of the land-office, upon the application of any person for any unappropriated lands in the fourth senate district, not less than one hundred and sixty acres, may sell such lands, if already surveyed, at such price as they shall ascertain to be their cash value.

Terms of sale of certain lands.

Laws of 1827, 239.

§ 62. If application be made for any quantity of such lands, not less than one thousand acres, not already surveyed, the commissioners may cause surveys and estimates thereof to be made, and may sell the same at their real cash value, as ascertained by them.

Proceedings.

Laws of 1827, 239.

§ 63. The purchasers of lands under the two last sections, shall be subject to the duties and liabilities, and entitled to the rights and privileges, of other purchasers of unappropriated lands.

Conditions.

Laws of 1827, 239.

§ 64. No lands so sold, for five years after the sale, shall be assessed by the assessors of the town in which they shall lie, at any higher valuation than the estimate upon which they were sold, unless improvements shall within that time have been made thereon; in which case, the value of such improvements shall be added to the estimate.

How assessed.

Laws of 1827, 239.

§ 65. The attorney-general, whenever so directed by the commissioners of the land-office, shall cause partition to be

Partition in certain cases how made.

TITLE A.

made of such tracts of land as are held in joint-tenancy, or tenancy in common, in which the people of this state are interested; and for that purpose he may do all such acts as any joint tenant, or tenant in common, is authorised by law to do.

1 R. L., 484, § 1.

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What to be
deemed
unappropri-
ated lands.

§ 66. The lands belonging to the common school fund, all escheated lands, and all other lands belonging to this state which are not directed by law to be kept for, or applied to, any specific purpose, shall be deemed unappropriated lands, within the meaning of this title.

Laws of 1828, ch. 321, § 6.

ARTICLE FOURTH.***OF GRANTS OF LAND UNDER WATER.**

SEC. 67. When and to whom commissioners may grant lands under water.

68 & 69. The power given in preceding section to extend to certain waters.

70 & 71. Applicants to give notice, and how.

When and
to whom.

§ 67. The commissioners of the land office shall have power to grant, in perpetuity or otherwise, so much of the lands under the waters of navigable rivers or lakes, as they shall deem necessary, to promote the commerce of this state, or proper for the beneficial enjoyment of the same by the adjacent owner; but no such grant shall be made to any person, other than the proprietor of the adjacent lands, and any such grant that shall be made to any other person, shall be void.

1 R. L., 293, § 4; Laws of 1815, 201, § 1; Laws of 1850, ch. 283.

Certain
waters.

§ 68. The powers hereby vested in the said commissioners, shall extend to lands under the water of Hudson's river, adjacent to the state of New-Jersey; and also to lands under the water adjacent to and surrounding Great Barn Island, in the city and county of New-York; and to the land between high and low water mark on said island; but no grant shall be so made as to interfere with the rights of the corporation of the city of New-York, or to affect the navigation of the waters surrounding the said island.

1 R. L., 293, § 4; Laws of 1815, 201, § 1; Laws of 1850, ch. 283.

Id.

§ 69. The powers of the commissioners shall also extend to the lands under water, adjacent to and surrounding Staten-Island; but no such grant shall be so made as to interfere with any rights of the corporation of the city of New-York, or to extend more than five hundred feet into the water, from low water mark.

1 R. L., 293, § 4; Laws of 1815, 201, § 1; Laws of 1850, ch. 283.

Notice by
applicant.

§ 70. Every applicant for a grant of land under water, shall, previous to his application, give notice thereof, by advertisement, to be published for six weeks successively, in a newspaper printed in the county in which the land so intended to

* See acts amendatory. Laws of 1835, ch. 232, and Laws of 1850, ch. 283.

be applied for, shall be situated; and shall cause a copy of such advertisement to be put up on the door of the court-house of such county, and if there be no court-house in the county, then at such place as the commissioners shall direct.

1 R. L., 293, § 4; Laws of 1815, 201, § 1; Laws of 1850, ch. 283.

§ 71. If there be no newspaper published in the county where such land shall lie, the advertisements shall be published in the newspaper that shall be printed nearest to such land.

Notice by applicant.

ARTICLE FIFTH.

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REGULATIONS CONCERNING THE PROTECTION OF THE PUBLIC LANDS, AND THE PAYMENT OF CHARGES THEREON.

SEC. 72. Sheriffs to report trespasses within their counties.

73. Duty of district attorney.

74. Penalty for taking timber from lands of state, and from Indian lands.

75. Application of such penalties when collected.

76. When defendant is not entitled to jail limits.

77. Assessments made upon lands of state, to be paid out of the treasury.

§ 72. The commissioners of the land-office may require the sheriff of any county, in which lands belonging to the people of this state, for which patents shall not have been issued, or any Indian lands, may be situated, to examine and report to them, and to the district attorney of his county, any trespasses that may be committed on such lands, by cutting or carrying away the timber thereon.

Trespasses to be reported by sheriff.

Laws of 1826, 209, § 3.

§ 73. Every district attorney, on receiving any such report, and also whenever directed by the commissioners of the land-office, shall commence suits against such trespassers, for the penalty imposed in the next section; or shall present indictments against such trespassers to the grand jury of his county, as he shall judge most discreet. In either case, he shall cause the witnesses to support such prosecutions to be duly subpoenaed, and shall conduct such prosecutions to a final determination.

Duty of district attorney.

Laws of 1826, 209, § 3.

§ 74. Every person who shall trespass on any land belonging to the people of this state, or any Indian lands, by cutting or carrying away, timber growing thereon, shall forfeit and pay the sum of twenty-five dollars for every tree that shall be cut or carried away by him, or under his direction.

Penalty for trespass on public and Indian lands.

Laws of 1826, 209, § 3; 13 W., 396.

§ 75. The district attorney shall apply such penalties, when collected, first to the payment of the costs and expenses incurred, including a reasonable compensation to the witnesses who shall attend in behalf of the people, to be certified by the court before which such recovery shall be had, and shall pay the residue thereof into the treasury of the county.

Proceeds how applied.

Laws of 1826, 209, § 3.

TITLE 5.
Defendant,
how im-
prisoned.

§ 76. Whenever execution shall be issued upon judgments recovered in actions for such penalties, and the body of any defendant shall be arrested thereon, he shall be imprisoned according to law, without being entitled to the liberties of the jail.

Laws of 1826, 209, § 3.

**Assess-
ments on
public
lands, how
paid,**

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§ 77. All assessments legally made, upon lands belonging to the people of this state, and all legal rents or charges thereon, shall be audited by the comptroller, and paid out of the treasury. And this section shall extend to all such assessments on lands sold or leased under the authority of this state, made prior to the sale or letting of such lands, unless the purchaser or lessee shall have agreed to pay such assessments.

Laws of 1822, 125, § 1.

ARTICLE SIXTH.

OF THE DUTIES OF THE COMMISSIONERS OF THE LAND-OFFICE, IN REGARD TO LANDS BELONGING TO THE CANAL FUND.

SEC. 78. How commissioners to dispose of such lands.

79. Expenses of surveys thereof, how defrayed.

80. Conditions of such sales.

81. Commissioners to appoint agents to prosecute for trespasses on lands.

82. Agents to give security.

83. They may bring suits in name of people.

84. Compensation and expenses of agent to be paid out of treasury.

**How and
when to be
sold.**

§ 78. The commissioners of the land-office shall dispose of the lands conveyed to this state for the benefit of the canal fund, in such manner, at such times, and on such terms as they shall judge best for the interest of the canal fund; and for that purpose, they shall from time to time, cause such surveys and examinations to be made, as they shall deem necessary.

**Expense of
surveys.**

§ 79. The expenses of such surveys and examinations, shall be defrayed in the same manner, as the expenses relating to the surveys and sales, of the unappropriated lands of this state.

**Terms of
sale.**

§ 80. Whenever any part of such lands shall be sold, the commissioners shall require at least fifty per cent. of the purchase money to be paid in hand, or secured to their satisfaction on other property, payable in three annual instalments, with interest; and in either case, the residue of the purchase money shall be payable in three yearly payments, with interest at the rate of six per cent. per annum.

Agents.

§ 81. The commissioners of the land-office shall, from time to time, appoint discreet agents, to prosecute all trespassers on any lands belonging to the canal fund.

**To give
bond.**

§ 82. Every such agent shall give such reasonable security, from time to time, to the people of this state, for the faithful execution of his trust, as the commissioners shall require and approve.

Powers.

§ 83. He may bring suits in the name of the people, against all persons who shall have trespassed on the said lands, and may prosecute the same to judgment and execution.

84. The costs and expenses which such agent may incur in any such suit, together with such compensation for services as the commissioners shall deem just, shall be paid to him out of the treasury ; but no allowance shall be made to him for any suit in which the defendant shall succeed on the trial, unless the commissioners shall be satisfied that there was probable cause for bringing such suit.

This Article was compiled from the act of 28th March, 1826 (Laws of 1826, 74).

TITLE VI.

OF MORTGAGES TO THE PEOPLE OF THIS STATE, AND THE FORECLOSURE THEREOF.

- Sec. 1. Mortgages to state may be foreclosed by notice, as under a power of sale.
2. Attorney-general to conduct proceedings, and to execute conveyance.
3. Whenever he thinks proper, attorney-general may foreclose in equity.
4. Attorney-general may postpone sale to procure an appraisal.
5. Pay of persons making appraisal.
6. When attorney-general shall bid therefor to the amount due.
7. If appraisal is less than amount due, he shall bid the amount of appraisal.
8. Amount to be credited to mortgagor in certain cases.
- 9, 10 & 11. What to be required of purchaser.
12. Attorney-general to give certificate of sale, &c.
13. When the mortgagor or his heirs may redeem.
14. What to be paid upon such redemption.
15. Costs, &c., of sale to be paid out of treasury.
16. When premises are not redeemed, to be conveyed to the state.
17. In this case, the expenses are to be paid out of the treasury.
18. When conveyance to be executed to purchaser.
19. When premises are advertised, terms of sale to be specified in advertisement.
20. In cases of foreclosure by notice, affidavit of publication to be filed.

How fore-
closed by
notice.

§ 1. All mortgages already executed, or hereafter to be executed to the people of this state, may be foreclosed, by giving notice in the manner in which mortgagees are authorised to sell, under a power of sale ; and every foreclosure so made, shall be an absolute bar of the equity of redemption, as against the mortgagor and all incumbrancers, subsequent to the state, and all persons claiming under him or them ; and shall have the like effect against all parties in interest, except prior incumbrancers, as if the mortgage had been foreclosed in a court of equity.

11 N. Y., 198.

§ 2. In all cases of foreclosure by notice, such notice shall be given by the attorney-general, who shall conduct the proceedings necessary to perfect every such foreclosure, and shall execute a proper conveyance, without warranty, to the purchaser.

See Laws of 1839, ch. 381.

§ 3. Whenever, in his judgment, it shall be proper, the attorney-general may proceed to foreclose the equity of redemption, in any lands mortgaged to the people of this state, in the court of chancery, or in the equity court of the district in which the lands may be situate.

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In equity.

TITLE 6.
Postpone-
ment of
sale, ap-
praisal.

§ 4. Whenever any premises mortgaged to the people of this state, shall be advertised for sale, it shall be lawful for the attorney-general, at any time before the premises are actually struck off, to postpone the sale at his discretion, for the purpose of enquiring into the value of the premises; and to employ such person or persons as he shall select, to appraise the same.

Pay of
appraisers.

§ 5. The persons employed by the attorney-general to make any such appraisement, shall receive a reasonable compensation for the same, to be settled and allowed by the comptroller, and to be paid out of the treasury.

Sum to be
bid.

§ 6. If the mortgaged premises are appraised at a sum equal to, or exceeding, the amount due the state, including costs and expenses, the attorney-general, on the sale of said premises, shall bid therefor in behalf of the people of this state, to the amount of the monies due and costs, in case such bidding shall be rendered necessary, to prevent the sale of such premises, for a less sum.

Id.

§ 7. If the mortgaged premises are appraised at a sum less than the amount due the state, the attorney-general shall in like manner bid to the amount of such appraisement and no more.

Sum cred-
ited.

§ 8. Whenever any mortgaged premises shall be struck off to the attorney-general, for any amount, less than the amount of mortgage money, interest and costs, no greater sum shall be credited to the mortgagor or any other person, on account of such sale, than the amount bid for the premises sold, deducting therefrom all costs and charges of sale.

Conditions
of sale.

§ 9. In all cases of such sales, whether under a notice or decree, if the mortgaged premises are not purchased for the benefit of this state, the attorney-general shall, if the mortgage bear an interest not exceeding six per cent., require of the purchaser, at the time of sale, such sum as shall be equal to the costs and expenses of sale, and the one-fourth part of the monies due the state; and for securing the remainder of the monies due the state, he may, on the execution of a deed to the purchaser, accept a bond and mortgage on the premises, sold, from the purchaser, to the people of this state, payable in six equal yearly instalments, with interest at the rate of six per cent. per annum.

Id.

§ 10. If the mortgage bear an interest of seven per cent. per annum, the attorney-general shall require of the purchaser, at the time of sale, the payment of the interest in arrear, with the costs and expenses of sale, and one fourth part of the principal of such mortgage: and for the remainder, on the execution of a deed to the purchaser, he may accept from such purchaser a bond and mortgage, for the residue of the mortgage money, to the people of this state, payable in six equal yearly instalments, with lawful interest; provided the title to the lands to be mortgaged, shall be clear, and the lands

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TITLE 4.

exclusive of the buildings thereon, shall be worth double the principal of such new mortgage.

§ 11. If the mortgaged premises shall sell for a greater sum than the amount due the state and the costs and expenses of such sale, the attorney-general shall also require of the purchaser, at the time of sale, the payment of such surplus. Conditions of sale.

§ 12. Upon every such sale, the attorney-general shall execute a certificate thereof to the purchaser, specifying the terms of the sale, and the amount paid by the purchaser; and in case the mortgaged premises shall be redeemed as herein-after provided, the sale shall be void and of no effect. Certificate of sale.

§ 13. Whenever any mortgaged premises shall be sold, either under a notice or a decree, it shall be lawful for the mortgagor, or his heirs or assigns, to redeem the same, at any time within sixty days after such sale. Redemption.

5 W., 95. Extended to 3 months by Laws of 1836, ch. 457.

§ 14. Upon every redemption, the party redeeming shall pay into the treasury the full amount due the state and charged on said premises, together with the costs and expenses of such sale, and interest on the whole sum at the rate of ten per cent. per annum from the time of sale to the time of redemption; and if the premises were sold for a greater sum than the amount due the state and such costs and expenses, he shall also pay into the treasury the like interest on the surplus monies. Conditions.

§ 15. If the premises redeemed shall have been purchased by the attorney-general for the benefit of the state, the amount of the costs and expenses of the sale shall be paid out of the treasury to the attorney-general: if the premises were not so purchased, there shall be paid out of the treasury to the purchaser, the sum actually paid into the treasury by him, together with the amount of interest thereon, at the rate of ten per cent. received from the person redeeming. Costs.

See Laws of 1836, ch. 457.

§ 16. Whenever any mortgaged premises purchased by the attorney-general for the benefit of the state, shall not be redeemed, he shall, if the premises were sold by him, immediately after the time allowed for redemption, and if the premises were sold under a decree, immediately after he shall have received a conveyance therefor, execute to the people of this state, a proper conveyance of said premises, which shall vest in the people the same title as would have been acquired by any other purchaser, at such sale, under a conveyance executed in pursuance thereof. Conveyance to the state.

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§ 17. Whenever any mortgaged premises are so purchased by the attorney-general, and not redeemed, all the expenses incurred by the attorney-general in the sale thereof, shall be paid to him out of the treasury. Expenses.

§ 18. Whenever any premises mortgaged to the people of this state, shall be sold and purchased by any person other Conveyance to purchasers

TITLE 7.

than the attorney-general, and not redeemed, a conveyance shall be executed to such purchaser, his heirs or assigns, at the expiration of the time allowed for redemption, on the payment, by him or them of the balance of the purchase money, or the execution of the proper securities therefor.

Laws of 1847, ch. 99.

Notice of
sale.

§ 19. Whenever any premises mortgaged to the people of this state, shall be advertised for sale, whether the foreclosure be by notice or decree, the terms of the sale shall be specified in the advertisement.

See Laws of 1831, ch. 102.

Evidence of
sale.

§ 20. In all cases of foreclosure by notice, the attorney-general shall file the affidavits of the publication of the advertisement of sale, and of the circumstances respecting the sale, in the office of the secretary of state, to be there recorded; and such affidavits, or the record thereof, shall have the like effect, as if the same had been recorded in the office of the clerk of the county where the premises are situate.

Statutes referred to, and in part re-enacted, in the compilation of this Title. 1 R. L., 375, § 14; *Ib.*, 484, § 2, 3, 4, 7, 8; Laws of 1814, p. 21, § 4; 1822, p. 286, § 1, 2, 3; 1824, p. 341, § 1 to 5 inc.; and 1825, p. 378.

TITLE VII.

OF THE PUBLIC BUILDINGS AND ERECTIONS.

SEC. 1. "Capitol" and "State Hall," in Albany, to retain those names.

2. (Repealed.)

3. Care of State Hall in whom vested.

4. Commissary-general to have care of state arsenals, &c.

5. State prisons to be under the care of their officers.

6. Marine hospital, to be under care of health commissioners.

7. Pier at Saggy-Harbor to be under care of receiver of its profits.

8. Such receiver to give bonds.

9. To collect profits of pier and wharf connected with it; to account to comptroller.

Capitol and
State Hall.

§ 1. The buildings in the city of Albany, now known as the "Capitol," and "State Hall," shall respectively continue to be known and denominated by those names.

The Laws of 1830, ch. 249, repealed § 2, and constitute a board of trustees of the capitol.

Care of
state hall.

§ 3. The custody and care of the state hall, shall be vested in the comptroller, secretary of state, and surveyor-general; and the comptroller shall have power, from time to time, to cause such repairs as may be necessary to its preservation, to be made to the said building, and to draw his warrant on the treasury for the expenses thereof, not exceeding one hundred dollars in any one year.

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Laws of 1826, 267; 1 R. L., 480, § 25. See Laws of 1834, ch. 66; 1840, ch. 295.

Arsenals,
&c.

§ 4. The custody and care of the several arsenals and magazines belonging to this state, and of the lands and buildings connected therewith, shall be vested in the commissary-general.

Laws of 1823, 350, § 54; Laws of 1821, 228; 1824, 261.

§ 5. The state prison at Mount-Pleasant, and the state prison at Auburn, and the lands and buildings connected therewith, shall severally be under the care of the officers charged therewith.

TITLE 8.
State prisons.

§ 6. The marine hospital at Staten-Island, and the lands and buildings connected therewith, shall be under the care of the commissioners of health of the city of New-York.

Marine hospital.

§ 7. The State Pier at the port of Sagg-Harbor, shall be under the care of the receiver of the profits thereof.

State pier.

Laws of 1823, 350, § 54; Laws of 1821, 228; 1824, 261.

§ 8. Every person hereafter appointed to the office of such receiver, shall, before he enters on the duties of his office, execute a bond to the people of this state, in the sum of two thousand dollars, and with one or more sureties, to be approved of by the comptroller, conditioned for the faithful performance, by such receiver, of the duties of his office; which bond shall be filed in the office of the comptroller.

Duty of receiver.

Laws of 1823, 350, § 54; Laws of 1821, 228; 1824, 261.

§ 9. It shall be the duty of such receiver to collect, from time to time, such portion of the profits arising from the state pier, and the long-wharf united with it, as the people of this state may be entitled to, under the appraisement and valuation made in pursuance of the act entitled "An act relative to the state wharf at the port of Sagg-Harbor," passed April 10th, 1824. He shall account with the comptroller, at the end of each year, for all monies received by him during such year, and after deducting ten per cent. thereon, as a full compensation for his services, shall pay the balance into the treasury.

Laws of 1823, 350, § 54; Laws of 1821, 228; 1824, 261. See Laws of 1830, ch. 249; 1834, ch. 66; 1840, ch. 295; 1841, ch. 213.

TITLE VIII.

OF THE STATE LIBRARY.

- Sec.**
1. Annual appropriation for its enlargement.
 2. Three hundred dollars to be paid annually by the court of chancery.
 3. When the expenses of the court will not allow of that sum, it is to be reduced.
 4. Trustees of library to report annually to legislature.
 - 5 & 6. Trustees to appoint a librarian, and to prescribe regulations of library.
 7. President of senate and speaker of assembly, before granting certificate to members, shall see that they have returned books taken from library.
 8. No book or map to be taken, except by members of legislature.
 9. Contingent expenses of library paid out of treasury.

§ 1. There shall be paid out of the treasury, to the trustees of the state library, in every year, the sum of one thousand dollars, for the gradual enlargement of the library

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Annual appropriations.

Laws of 1827, 318, § 2.

§ 2. It shall be the duty of the court of chancery, to direct the assistant register of that court to pay, in the month of May, in each year, to the said trustees, out of the interest or profits arising from the surplus of the common fund appertaining to the court of chancery, and under the particular

Three hundred dollars from chancery fund.

TITLE 4.

charge of such assistant register, the sum of three hundred dollars, to be expended in the gradual enlargement of the library.

Laws of 1825, 302, § 2.

May be
reduced

§ 3. If at any time the interest or profits of said fund shall not be sufficient to discharge the contingent expenses of the court of chancery, and also the annual appropriation of three hundred dollars, the court of chancery may direct that such annual sum be so reduced, that the expenses of the court shall be first paid.

Laws of 1825, 302, § 2.

Annual
report.

§ 4. It shall be the duty of the trustees of the state library, annually to report to the legislature, the manner in which the monies by them received during the year preceding, have been expended ; together with a true and perfect catalogue of all the books, maps and charts then remaining in the library.

Laws of 1825, 302, § 4.

Librarian.

§ 5. The trustees shall have power, from time to time, to appoint a librarian to superintend and take care of the library ; and to prescribe such rules and regulations for the government of the library, as they shall think proper.

Laws of 1818, 297, § 2.

Regula-
tions.

§ 6. It shall be the duty of the trustees to provide, in their regulations, that any member of the senate or assembly, during the session of the legislature, or during the sitting of the court for the correction of errors, or of the senate only, shall be permitted, under proper restrictions, forfeitures and penalties, to take to his boarding-house, or private room, any book belonging to the library, except such books, as the trustees shall determine are necessary always to be kept in the library, as books of reference ; but no member of the legislature shall be permitted to take or detain from the library, more than two volumes at any one time.

Laws of 1825, 303, § 5.

Members
to return
books.

§ 7. Before the president of the senate, or the speaker of the assembly, shall grant to any member a certificate of the time of his attendance, he shall be satisfied that such member has returned all books taken out of the library by him, and has settled all accounts for fines, for injuring such books, or otherwise.

Laws of 1825, 303, § 5.

Books, &c.,
not to be
taken out.

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§ 8. It shall also be the duty of the trustees to provide in their regulations, that no book, map, or other publication, shall be at any time taken out of the library by any other person than a member of the legislature, for any purpose whatever.

Laws of 1818, 297, § 2 ; 1825, 303, § 3 & 6 ; 1829, ch. 188.

Contingent
expenses.

§ 9. The contingent expenses of the library, incurred for stationery, fire-wood, and candles, purchased for the library,

shall be duly certified by a majority of the trustees, and paid out of the treasury.

Laws of 1818, 297, § 2; 1825, p. 303, § 3 & 6; 1829, ch. 122. See Laws of 1844, ch. 255; 1845, ch. 85; 1848, ch. 262; 1849, ch. 300.

ART. 1.

TITLE IX.

(See Act amendatory, Laws of 1836, chap. 297.)

OF THE CANALS.

ART. 1.—Designation and description of the canals.

ART. 2.—Of the canal commissioners, and their general powers and duties.

ART. 3.—Of the appraisement of damages.

ART. 4.—Of the canal board, their powers and duties.

ART. 5.—Of water privileges, and the sale of surplus waters.

ART. 6.—Of the superintendents of repairs, and the collectors of tolls.

ART. 7.—Regulations and penalties concerning the navigation of the canals, and the collection of tolls.

ART. 8.—Regulations and penalties concerning the protection and maintenance of the canals.

ART. 9.—Miscellaneous provisions of a general nature.

ARTICLE FIRST.

DESIGNATION AND DESCRIPTION OF THE CANALS.

SEC. 1. Names of the canals.

2. The Erie and Champlain canals declared to be completed.

3. Canal board to declare when other canals completed.

4 & 5. Map of canals to be made; to be compiled by commissioners, and filed.

6. Comptroller to send copy to every county intersected by canal, to be filed.

7. A transcript from original, or certified copy of map, presumptive evidence.

8. Provisions of this Title to apply to all state canals.

§ 1. The navigable communications heretofore constructed, and now in the progress of construction, by the state, shall be known and designated as follows: Names of canals.

1. The navigable communication connecting the waters of lake Erie with those of the Hudson river, and all the side cuts, feeders and other works belonging to the state connected therewith, by the name of the "Erie Canal."

1 R. L., 247; Act of June 19th, 1812, in Session Laws of 1812; Laws of 1814, p. 256, § 43; 1816, p. 295; 1817, p. 301; 315, § 12; 1818, p. 17; 1819, p. 121, 123; 1820, p. 99, 171, 183, 225; 1821, p. 25; 1822, p. 306, 320, § 4, 5, 6; 1823, p. 116, 269; 1824, p. 315, 342; 1825, p. 398, 414; 1826, p. 360; 1827, p. 220.

2. That connecting the waters of lake Champlain, with those of the Hudson, and the works belonging thereto, by the name of the "Champlain Canal."

1 R. L., 247; Act of June 19th, 1812, in Session Laws of 1812; Laws of 1814, p. 256, § 43; 1816, p. 295; 1817, p. 301; 315, § 12; 1818, p. 17; 1819, p. 121, 123; 1820, p. 99, 171, 183, 225; 1821, p. 25; 1822, p. 306, 320, § 4, 5, 6; 1823, p. 116, 269; 1824, p. 315, 342; 1825, p. 398, 414; 1826, p. 360; 1827, p. 220.

3. That commencing at Geneva, and terminating near Montezuma, and connecting the waters of the Seneca lake with

TITLE 9.
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the Erie canal, and the works belonging thereto by the name of the "Cayuga and Seneca Canal."

Session Laws of 1813, chap. 144; 1814, 146; 1817, 83; 1825, 391; 1827, 223, § 12.

4. That commencing at Syracuse, and terminating at Oswego, by the name of the "Oswego Canal."

Laws of 1827, 223, § 12. See Laws of 1829, ch. 120; ch. 135; 1833, ch. 32; 1836, ch. 157; ch. 257.

Certain
canals com-
pleted.

§ 2. The Erie and Champlain canals are hereby declared to be completed, and all the powers and authority heretofore given by law to the canal commissioners, in relation to the construction of those canals, shall be deemed to have been executed.

Completion
of others,
how de-
clared.

§ 3. Whenever any canal now in the progress of construction, or that shall hereafter be constructed, shall be completed, the canal board shall, by an order, declare the fact of such completion, and from that time, all the powers and authority of the canal commissioners, in relation to the construction of such canal, shall cease.

Map, &c.,
of canals.

§ 4. A complete manuscript map and field notes, of every canal that now is, or hereafter shall be completed, and of all the lands belonging to the state adjacent thereto or connected therewith, shall be made, on which the boundaries of every parcel of such lands, to which the state shall have a separate title, shall be designated, and the names of the former owners and the date of each title be entered. The expense thereof shall be paid out of the canal fund. If the canal commissioners, on examination of the premises, be satisfied that the cost and expense of making such map, field notes and survey, will exceed the sum of five thousand dollars, no such map and field notes shall be compiled.

11 N. Y., 313; 15 B., 641.

Where filed

§ 5. Every such map shall be compiled by the canal commissioners, who shall, for that purpose, cause all necessary surveys to be made; when prepared, it shall be submitted to the canal board for its approbation; and when so approved, shall be signed by the canal commissioners, be certified by them as correct, and be filed in the office of the comptroller.

Ib.

§ 6. A copy of each map so filed, together with the field books and notes of such survey, or of such part thereof as the canal board shall direct, shall be transmitted by the comptroller to every county intersected by the canal to which the map shall relate, and shall be filed in the clerk's office of such county.

Copy to be
evidence.

§ 7. A transcript from the original map, or from a copy thereof, certified as correct, by the officer with whom such map or copy shall be filed, shall be received as presumptive evidence, in all judicial and legal proceedings.

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Application
of this Title

§ 8. The provisions of this Title shall be construed to apply to every canal belonging to the state, of which the construction now is or hereafter shall be authorised by law.

See Laws of 1837, ch. 451.

ARTICLE SECOND.

OF THE CANAL COMMISSIONERS, AND THEIR GENERAL POWERS AND DUTIES.

Sec. 9. Superintendence of canals vested in canal commissioners.

- 10 & 11. Acting commissioners to give bond. When to be renewed.
12. Choice of president and secretary.
13. Of calling board together.
14. A majority of board may do business.
15. Board may employ agents, &c.
16. Commissioners have power to make feeders, &c., for proper construction of canals authorised by law, and to take possession of all necessary lands, &c.
17. Extraordinary repairs, how made.
18. Such repairs to be completed as soon as practicable.
19. Public roads may be altered or discontinued, when necessary.
20. Description of the road altered, &c., to be filed in town clerk's office.
21. Passage of road discontinued, &c., not to be obstructed till new road passable.
22. Alterations heretofore made, to be deemed valid.
23. When navigation interrupted, injury causing it to be immediately repaired.
24. Commissioners to erect and keep toll-houses, &c., in repair.
25. To make regulations concerning the navigation of the canal.
26. Regulations to be printed and distributed.
27. To be filed in comptroller's office; proof of their existence.
28. Portion of canal to be assigned to each acting commissioner.
29. Duty of each acting commissioner.
30. Must take duplicate receipts for monies paid by him.
31. Contracts for making repairs and improvements, to be in writing.
32. With whom copies of contracts are to be deposited.
33. Publication of proposals for contracts.
34. What proposals to contain.
35. No more than one proposition to be received from any one person, for same contract.
36. Security to be given by contractor; penalty for violation of contract.
37. When extra allowance to be made contractors.
38. Materials procured under contract, exempt from execution.
39. Either of commissioners may draw money to pay contractors.
40. No commissioner allowed to have in his hands more than 10,000 dollars at one time.
41. Damages and penalties, to be paid to commissioners of canal fund.
42. Commissioners to account to comptroller, and comptroller to legislature.
43. Commissioners, &c., can not be held to bail, or taken with a warrant.
44. When commissioners to make their report. Its contents.

§ 9. The general care and superintendence of the canals shall continue to be vested in the board of canal commissioners; so many of whom, not exceeding two, as may be annually designated by the board, shall be acting commissioners.

Board; acting commissioners.

Laws of 1816, 295, § 2. See Laws of 1844, ch. 280; 1845, ch. 6.

§ 10. Each acting canal commissioner, before he shall enter on the duties of his office, shall execute a bond to the people of this state, in a penalty of twenty thousand dollars, with two substantial freeholders as sureties, conditioned for the faithful discharge of the duties of his office, and for the faithful accounting for all monies entrusted to him as such commissioner, whenever and as often as he shall be so required by law, by a concurrent resolution of the senate and assembly,

Bond of acting commissioners.
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TITLE 9.

or by the comptroller ; such bond shall be approved of by the comptroller, and filed in his office.

Laws of 1821, 26, § 4.

When re-
newed.

§ 11. Every such bond heretofore given, or that shall hereafter be given, shall be renewed from time to time with new or additional sureties, whenever such renewal shall be demanded by the comptroller, or the commissioners of the canal fund ; and the refusal of any commissioner to renew his bond when so required, shall be deemed a breach of its condition.

Officers of
board.

§ 12. The board shall annually choose one of their number to be their president, and another from time to time as their secretary, who shall keep and preserve regular minutes of all their proceedings.

Laws of 1816, 295, § 2.

Meetings,
how called.

§ 13. It shall be the duty of the president to call a meeting of the board, on the request in writing of a commissioner, and without such request, whenever he shall deem it expedient.

Laws of 1816, 295, § 2.

Quorum.

§ 14. A majority of the board shall be a quorum for the transaction of business, and may adjourn from time to time, and fix the time and place of future meetings.

Laws of 1816, 295, § 2 ; 1817, 302, § 2.

Powers of
commissioners ;
agents, &c.

§ 15. The board may employ such and so many agents, engineers, draftsmen, surveyors and other persons, as they may judge necessary, to enable them to discharge their duties as commissioners, and shall pay such compensation as they shall judge reasonable, to each person so employed.

Laws of 1816, 295, § 2 ; 1817, 302, § 2.

Ib., feeders
&c.

§ 16. In the construction of every canal of which the construction is or shall be authorised by law, the canal commissioners shall have power, and it shall be their duty, to make all such canals, feeders, locks, dams, aqueducts, and other works, as they shall deem the proper construction of such canal to require ; and they shall enter on, and take possession of, and use, all lands, streams and waters, the appropriation of which, for the use of such canals and works, shall, in their judgment, be necessary.

Laws of 1817, 302, § 3 ; 19 B., 266 ; 2 H., 347.

Ib., extra-
ordinary
repairs.

§ 17. Whenever, in the opinion of the canal commissioners, it shall become necessary or expedient, to make any extraordinary repairs or improvements on any completed canal, such as the opening of new feeders, or the construction of additional locks, dams, embankments, tunnels or aqueducts, it shall be their duty to cause the necessary surveys and levels to be taken, and accurate drafts, plans and models, or maps, as the case may require, of the contemplated works, together with an estimate, in minute detail, of the probable expense to

be incurred, and to submit the same to the canal board for their approbation.

Laws of 1816, 296, § 3; 1827, 229, § 38.

§ 18. If such extraordinary repairs or improvements shall be directed by the board or the legislature, it shall be the duty of the commissioners to proceed, as soon as circumstances will permit, to execute and complete the same; and for that purpose, by themselves or their agents, to take possession of, and use, all lands, waters or streams of which the occupation and use, in their judgment, may be necessary to enable them to discharge such duties.

To take
lands, &c.

Laws of 1817, 302, § 3.

§ 19. Whenever for the purpose of constructing a canal, or making any extraordinary repairs or improvements, it shall be deemed necessary by the canal commissioner having charge of the work, to discontinue or alter any part of a public road, on account of its interference with the proper location or construction of such work, he shall make, or direct to be made, such discontinuance or alteration.

Altering
roads, &c.

Laws of 1820, 190, § 21.

§ 20. It shall be his duty to draw up in writing and figures, a true description of all such parts of a public road as shall be so discontinued and new laid, and to file such description in the town clerk's office, of the town in which such parts may be situate, and from the time of such filing, such discontinuance and alterations shall be valid in law.

Proceed-
ings.

Laws of 1820, 190, § 21.

§ 21. The canal commissioners shall not, however, obstruct the passage of any part of a public road, so discontinued or altered, until they shall have opened and worked, so as to render passable, such part of such road as shall have been new laid by their engineer; and the certificate in writing of any justice of the peace in the county where such road shall be situated, that the part so new laid has been so opened and worked, shall be their sufficient justification.

Restric-
tions.

§ 22. Every alteration heretofore made by any engineer, in any public road on either of the canals, shall, from the time of such alteration, be deemed valid in law.

Former
alterations.

Laws of 1820, 190, § 21. See Laws of 1834, ch. 276.

§ 23. Whenever the navigation of any of the canals shall be interrupted or endangered, it shall be the duty of the commissioners, without delay, to repair the injury causing or threatening such interruption, and for that purpose, they shall have power, by themselves or their agents, to enter upon and use any contiguous lands, and to procure therefrom all such materials as in their judgment may be necessary or proper to be used in making such repairs.

Injuries to
canals.

Laws of 1820, 183, § 3. See Laws of 1833, ch. 196.

TITLE 9.
[929]
Toll-
houses, &c.

§ 24. It shall be the duty of the canal commissioners, to keep in complete repair, all toll-houses, weighing-scales, offices and other edifices, already built or purchased, for the use of the canals; and at such times and places as the canal board may direct, to erect such further toll-houses, weighing-scales, offices and other edifices, and purchase such ground for the convenience thereof, as may be deemed necessary for the profitable use of the canals.

Laws of 1820, 189, § 20.

To make
regulations.

§ 25. They shall, from time to time, make such rules and regulations, not inconsistent with the laws of the state, in respect to the size and structure of boats, rafts and other floats, on the waters of the canals, and the weighing and inspecting of boats and their lading, and in respect to all matters connected with the navigation thereof, and impose such forfeitures of money, for the breach of such rules and regulations, as they may judge reasonable; but no forfeiture so imposed, shall, for a single offence, exceed the sum of twenty-five dollars.

Laws of 1820, 189, § 20.

Notice of
them.

§ 26. They shall cause a sufficient number of copies of all such rules and regulations, including the forfeitures for the breach thereof, to be printed, and shall distribute the same to the superintendents of repairs, the collectors of tolls, and lock-keepers, to be kept in their respective offices for public inspection.

How au-
thenticated.

§ 27. All rules, regulations and forfeitures, established by them in relation to the management and navigation of the canals, shall be filed in the office of the comptroller, and a copy thereof, certified by the comptroller, under his hand and the seal of his office, shall be received in all courts of law, as due proof that such rules, regulations and forfeitures were by them established.

Laws of 1827, 224, § 15.

Special
charge of
canals.

§ 28. The board shall, from time to time, assign to each acting commissioner, in special charge, the line or portion of the line, of one or more of the canals.

Duty of
acting com-
missioners.

§ 29. It shall be the duty of each acting commissioner,

1. To examine frequently and carefully into the state of the canals and works, committed to his charge.

2. To direct and cause to be made, such ordinary repairs as he shall perceive to be necessary.

3. To superintend and cause to be made, such extraordinary repairs or improvements, as shall be ordered.

4. To make, by himself or a superintendent of repairs, all necessary contracts for the supply of materials and the performance of labor.

5. To inquire into the official conduct of all superintendents of repairs, collectors of tolls, lock-keepers and other subordi-

nate agents, and to receive and hear all complaints that may be preferred against them.

1 H., 285.

And generally to enforce the faithful execution, by all persons concerned, of the provisions of this Title. [223]

See Laws of 1847, ch. 278.

§ 30. It shall be the duty of each acting commissioner, to take duplicate receipts for all monies, advanced or paid by him. Receipts.

Laws of 1821, 26, § 5.

§ 31. All contracts for the construction of a canal, and for the making of any repairs or improvements in the canals, directed by the legislature, or canal board, shall be made in writing, and of each contract, three copies shall be executed by the parties. Contracts.

Laws of 1825, 401, § 4; 1827, 229, § 36; 1828, chap. 321, § 3, April 21, 1828.

§ 32. One of such copies shall be retained by the board of canal commissioners, or the acting commissioner having the charge of such repairs or improvements; another shall be deposited with the comptroller. Copies of them.

Laws of 1825, 401, § 4; 1827, 229, § 36; 1828, chap. 321, § 3, April 21, 1828.

§ 33. Public notice shall be given of the time and place, at which sealed proposals will be received for entering into contracts, under the thirty-first section, which notice shall be published for three weeks in succession in the state paper, and in one or more of the newspapers of each county, in which the work to be performed, or any part thereof, is to be made. Notice for proposals.

Laws of 1825, 401, § 4; 1827, 229, § 36; 1828, chap. 321, § 3, April 21, 1828.

§ 34. All proposals for contracts, for which sealed proposals are to be offered, shall be for a sum certain, as to the price to be paid or received; and no proposition which is not thus definite and certain, or which contains any alternative condition or limitation, as to such price, shall be received or acted on. Requisites of proposals.

Laws of 1826, 363, § 32.

§ 35. No more than one proposition shall be received from any one person for the same contract, and all the propositions of the person offering more than one, for the same object, shall be rejected. Ib.

Laws of 1826, 363, § 32.

§ 36. Every person who shall enter into any contract for the supply of materials or the performance of labor, on any canal, shall give satisfactory security to the canal commissioners, for the faithful performance of his contract, according to its terms; and if any person, having given such security, shall neglect or refuse to perform his contract, he shall be excluded from any interest in any future contract, in relation to the same object. Security.

Laws of 1827, 229, § 35. See Laws of 1848, ch. 72; 1849, ch. 348.

TITLE 24
Extra
allowance.

§ 37. No allowance over and above the contract price shall be made by the canal commissioners to any contractor, unless such extra allowance shall be directed by the canal board.

Laws of 1826, 363, § 33.

Certain
materials
exempt
from execu-
tion.
[2294]

§ 38. All materials procured, or partially procured, under a contract with the canal commissioners, shall be exempt from execution; but it shall be the duty of the canal commissioners, to pay the monies due for such materials to the judgment creditor of the contractor, under whose execution such materials might otherwise have been sold, upon his producing to them due proof that his execution would have so attached; and such payment shall be held a valid payment on the contract.

Laws of 1822, 321, § 6.

Payment
of con-
tracts.

§ 39. Either of the canal commissioners may draw upon the commissioners of the canal fund, for any sum to be paid to a contractor, upon his contract; and if a copy of such contract shall have been duly filed in the office of the comptroller, and a receipt of the contractor for such draft shall also be filed in the same office, it shall be the duty of the commissioners of the canal fund to pay the draft.

Laws of 1826, 361, § 20; 1827, 229, § 36. See Laws of 1847, ch. 278; 1850, ch. 278.

Advances
to commis-
sioners.

§ 40. No canal commissioner shall be allowed as such, to have in his hands at any one time, more than ten thousand dollars; and every sum advanced to, or received by him, shall be deemed to remain in his hands until its application shall have been properly accounted for to the comptroller.

Laws of 1826, 361, § 20; 1827, 229, § 36. See Laws of 1837, ch. 451.

Penalties,
&c.

§ 41. In all cases in which suits shall be brought by the canal commissioners, or under their direction, for the recovery of penalties or damages under the provisions of this Title, it shall be their duty to keep an accurate account of the recoveries, and of the costs and expenses, and after deducting such costs and expenses, to pay over the residue of the sums received, to the commissioners of the canal fund, or account for the same with the comptroller.

Accounts.

§ 42. It shall be the duty of the canal commissioners to account and settle with the comptroller, on or before the fifteenth day of January in each year, for all monies received by them, and each of them, from the commissioners of the canal fund, or belonging to that fund; and such settlement, specifying the sums respectively paid to all contractors, engineers, agents and servants of every description, employed on the canals, and to all persons having received a compensation for damages, and the names of such persons shall, without delay, be reported by the comptroller to the legislature.

Laws of 1819, 124, § 6.

Certain
officers not

§ 43. No acting commissioner, superintendent of repairs,

collector or lock-keeper, on any canal, shall be held to bail, or taken by warrant, in any civil suit, for any act done, or omitted to be done by him, in the exercise of his official duties.

ART. 2.
to be held
to bail.

Laws of 1820, 190, § 22.

§ 44. Within twenty days from the commencement of each annual session of the legislature, the canal commissioners shall make their report to the legislature; and in such report shall state the condition of the canals, and all the works and improvements connected therewith, the improvements and repairs made during the past year, or contemplated to be made, and the amount of monies, during the same period, received and expended by them, and each of them, in the discharge of their duties, and shall recommend such measures, in relation to the canals, as they shall deem the public interest to require.

Annual
report to
legislature.

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Laws of 1817, 302, § 2; 1827, 239, § 37. See Laws of 1847, ch. 278; 1849, ch. 363.

ARTICLE THIRD.

OF THE APPRAISEMENT OF DAMAGES.

Sec. 45. Number of canal appraisers; to take oath.

46. To appraise value of private property appropriated to public purposes.

47. To meet in the vicinity of premises, and hear evidence.

48. Claimants when and how to apply; consequence of neglect.

49. Claims for former damages, when to be exhibited.

50. Every decision of appraisers to be entered in a book.

51. A transcript of entry to be recorded in clerk's office of county.

52. Fee simple of premises vested in state.

53. When damages exceed benefits, commissioners to pay excess.

54. Appraisers to be paid \$3 a day.

55. Claimant and commissioners may appeal.

56. Proceedings on appeal.

57. Appraisers to make return to appeal.

58 to 62. Damages for temporary occupation.

63. Appraisers to take oath; their decision conclusive.

64. To make certificate; commissioners to pay amount certified.

65. Payment, or offer to pay amount, to discharge from liability.

66. When claimant to pay costs and when commissioners.

67. Appraisers to be paid \$1.50 per day.

§ 45. There shall continue to be appointed two officers, by the name of canal appraisers, who being associated with any acting canal commissioner, shall be the appraisers of damages, in the cases hereinafter specified. The oath or affirmation of office, taken by the canal appraisers, shall be filed in the office of the secretary of state.

Appraisers.

Laws of 1825, 398, § 1; 7 Cow., 529. See Laws of 1836, ch. 287; 1857, ch. 538.

§ 46. When any lands, waters or streams, appropriated by the canal commissioners, to the use of the public, shall not be given or granted to the state, it shall be the duty of the appraisers to make a just and equitable estimate and appraisement of the damages, and benefits, resulting to the persons

Their duty.

TITLE 3.

interested in the premises so appropriated, from the construction of the work, for the purpose of making which, such premises shall have been taken.

Laws of 1817, 302, § 3; 6 H., 361.

To meet,
&c.

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Claimants
for future
damages,
when to
apply.

§ 47. It shall be their duty, for that purpose, to meet at such times and places as they may deem necessary, and as nearly in the vicinity of the premises, as conveniently may be, and hear such proper and relevant evidence as shall be offered; and they are, for that purpose, empowered to administer oaths to witnesses.*

§ 48. Every person interested in premises so appropriated, if he intend to make any claim for damages, shall, within one year after such premises shall have been taken for the use of the state, exhibit to the appraisers a statement of his claim, in writing, signed by himself, his guardian or agent, and specifying the nature and extent of his interest in the premises appropriated, and the amount of damages; and every person refusing or neglecting to exhibit such claim, within the time prescribed, shall be deemed to have surrendered to the state his interest in the premises so appropriated.

4 N. Y., 68; 9 B., 496. See Laws of 1836, ch. 287; 1829, ch. 368; 1855, ch. 535.

Former
damages.

§ 49. No claim for damages, for premises that shall have been appropriated to the use of a canal, at any time before this Chapter shall be in force, shall be received by the appraisers, unless it shall be exhibited within one year after this Chapter shall become a law; and the premises so appropriated shall be deemed the property of the state; and no claims, other than those so exhibited, shall be paid without the special direction of the legislature.

11 N. Y., 313; 4 N. Y., 68; 15 B., 643.

Decisions
to be en-
tered.

§ 50. A regular entry of every determination and appraisement made by the appraisers, certified and signed by the appraisers making it, and containing an apt and sufficient description of the premises so appropriated, the names of the persons interested, and the sums estimated to each, for benefits and damages, shall be made in a book kept for that purpose, by the canal commissioners.

Laws of 1817, 302, § 3; 15 B., 641. See Laws of 1829, ch. 368; 1836, ch. 287; 1849, ch. 352.

Copy, evi-
dence.

§ 51. A transcript of every such entry, signed by the appraisers, shall be recorded in the clerk's office of each county in which the premises appropriated shall, in whole or in part, be situated.

Laws of 1855, ch. 535; 13 N. Y., 244.

Right of
state.

§ 52. The fee simple of all premises so appropriated, in relation to which, such estimate and appraisement shall have been made and recorded, shall be vested in the people of this state.

Laws of 1817, 302, § 3; 15 B., 643.

* Sec. 1 and 2 of ch. 368, of Laws of 1836, contain provisions inconsistent with this section, and probably repeal it.

ART. 2.
Payment
for damages

§ 53. If the damages so estimated and appraised, shall exceed the benefits, it shall be the duty of the canal commissioners to pay the amount of such excess of the damages, to the persons appearing, by the determination of the appraisers, to be thereto entitled; but no such payment shall be made, where an appeal or writ of error shall be prosecuted by the canal commissioners, until a final decision on the appraisalment shall have been had.

Laws of 1817, 302, § 3; Laws of 1827, 230, § 43.

§ 54. Each appraiser, for each day's actual attendance in the discharge of the duties of his office, shall receive the sum of three dollars, to be paid out of the treasury, and charged to the canal fund.

Pay of
appraisers.

Laws of 1825, 400, § 5. See Laws of 1836, ch. 287.

§ 55. Every person having exhibited a claim for damages to the appraisers, and the canal commissioners where they shall deem the interests of the state to require it, may enter an appeal from the decision of the appraisers to the supreme court, who shall proceed to reverse, affirm or modify the appraisalment, as in their opinion justice shall require; but in no case shall they allow a larger sum for damages, than shall have been demanded by the party entitled thereto, in his claim exhibited to the appraisers.*

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Appeal

2 H., 347.

§ 56. Every such appeal shall be made in writing, stating briefly the grounds on which the appeal is made: if made by the canal commissioners, one copy of the appeal shall be served on the canal appraisers and another on the party claiming damages, his guardian or agent, either personally or by leaving the same at his usual place of abode; if made by the party claiming damages, one copy of the appeal shall be served on the appraisers, or one of them, and another on the canal commissioners. In all cases the appeal must be made and the proper copies served within three months, from the time that the decision appealed from shall have been made and entered.†

Proceed-
ings.

§ 57. The appraisers shall make a return, in writing, to the every appeal so served on them, and shall insert and state therein a copy of the claim for damages exhibited to them, the evidence produced or offered before them, and the grounds and reasons of their determination.†

§ 58. When damages shall be claimed by the owner of any land which the canal commissioners shall have occupied for temporary purposes, or on which they shall have entered for the purpose of obtaining materials for repairs, the acting commissioner on the line of the canal nearest to which the land shall be situate, or any engineer or superintendent of repairs

Damages
settled by
agreement.

* By § 3 of ch. 368, Laws of 1839, the appeal is to the Canal Board, whose decision is final.

† Sections 4, 5, 6 and 7 of ch. 368 of Laws of 1839, are, in some measure, if not entirely, a substitute for these two sections.

TITLE 9.

authorised by him, may fix by agreement the amount of damages which such owner ought to receive.

Laws of 1820, 183, § 3; 13 N. Y., 238. See Laws of 1836, ch. 287.

Reference.

§ 59. If an agreement can not be made, the owner shall select one discreet freeholder of the county in which the land is situate, having no interest, direct or indirect, in the damages claimed, and the canal commissioner, engineer or superintendent another; and the two thus chosen shall select a third to act with them in appraising the damages so claimed.

Laws of 1820, 183, § 3.

Proceedings.

§ 60. If the owner shall refuse or neglect to appoint an appraiser, such canal commissioner, engineer or superintendent shall serve upon him a notice, stating the name of the appraiser appointed by himself, and requiring such owner to make a similar appointment within two days thereafter, and if within that time no such appointment shall be made and signified, such commissioner, engineer or superintendent shall apply to a judge of the county court of the county where the lands are situate, to appoint an appraiser in behalf of such owner.

3 H., 599.

Ib.

§ 61. The judge to whom such application shall be made, upon due proof of the service of such notice, shall, in writing, appoint an appraiser in behalf of the owner, who shall have the same powers as if appointed by the owner himself.

Ib.

§ 62. The two last preceding sections shall be construed as also prescribing the course to be pursued by the owner of the lands, where the refusal or neglect to appoint an appraiser, shall proceed from such canal commissioner, engineer or superintendent.

Ib.

§ 63. The appraisers shall, before they enter on the duties of their trust, take the oath prescribed by the constitution of this state, before any person authorised to administer oaths; they shall then proceed to enquire into and assess the damages so claimed, and their determination, or that of any two of them, as to the amount of damages that ought to be paid, shall be conclusive.

Laws of 1820, 183, § 3. Laws of 1829, ch. 368, contain eight sections relating to appraisal of canal damages, which repeal such of the provisions of this article as are inconsistent with that act.

Ib.

§ 64. The appraisers making such determination, shall make a certificate thereof, under their hands and seals, and the amount of damages thus certified, (the costs, when not payable by the canal commissioners being deducted,) shall be paid by the canal commissioners to the person appearing by such certificate to be entitled thereto, within ten days after such certificate shall have been received by the canal commissioners, or as soon thereafter as they shall be in funds.

Laws of 1820, 183, § 3. Laws of 1829, ch. 368, contain eight sections relating to appraisal of canal damages, which repeal such of the provisions of this article as are inconsistent with that act.

ART. 4
Claim how
barred.

§ 65. Proof of such payment, or of the offer thereof, in case the party entitled thereto, shall decline to receive the same, shall forever discharge the canal commissioners and all persons employed by them, from all claims for entering upon and occupying such lands, and for taking and using the materials procured therefrom.

Laws of 1820, 183, § 3; Laws of 1829, ch. 368, contain eight sections relating to appraisal of canal damages, which repeal such of the provisions of this article as are inconsistent with that act.

§ 66. If the amount of damages so certified shall, in any case, not exceed the sum offered for such damages by such acting canal commissioner, engineer, or superintendent, before the appointment of the appraisers, then the costs of all the proceedings after such offer, shall be deducted by the canal commissioners from the amount of damages certified; but if such amount shall exceed such previous offer, then all such costs shall be paid by the commissioners, in addition to the damages certified.

Costs how
paid.

Laws of 1820, 183, § 3; see Laws of 1829, ch. 48; 1836, ch. 287; 1837, ch. 143; 1840, ch. 288; 1849, ch. 352; 1854, ch. 332; Laws of 1829, ch. 368, contain eight sections relating to appraisal of canal damages, which repeal such of the provisions of this article as are inconsistent with that act.

§ 67. Each of such appraisers shall be entitled for his services, to the sum of one dollar and fifty cents per day.

Fees of
appraisers.

Laws of 1820, 183, § 3; Laws of 1829, ch. 368, contain eight sections relating to appraisal of canal damages, which repeal such of the provisions of this article as are inconsistent with that act.

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ARTICLE FOURTH.

OF THE CANAL BOARD, THEIR POWERS AND DUTIES.

Sec. 68 & 69. Canal Board, their powers and duties.

70. To fix rates of toll, regulate their collection, and impose forfeitures.

71. Certain sections of this Title to embrace such rates of toll.

72 & 73. Board may remit forfeitures.

74. What repairs may be executed by board.

75. When board may sell or lease surplus water

76 & 77. Canal board may make extra allowance to contractors.

78. To be founded on a petition to board, verified by proof.

§ 68. There shall continue to be a canal board, who shall possess the powers, and discharge the duties, enumerated in this Title, or which shall hereafter be by law enacted or declared.

Powers and
duties.

Laws of 1826, 360, § 4.

§ 69. They shall have power to appoint so many superintendents of repairs, and collectors of tolls, on the canals, as they may deem necessary, to supply all vacancies that may occur in those offices, to remove any so appointed when they judge such removal proper, and to determine the amount of compensation which they shall respectively receive; but no compensation exceeding one thousand dollars for any one year, shall be allowed to any superintendent.

Id.
Appoint-
ment of
officers, &c.

Laws of 1826, 360 § 5; Laws of 1827, 224, § 13; see Laws of 1841, ch. 160.

§ 70. The canal board shall, from time to time, fix the rates

Rates of
toll.

TITLE 9.

of tolls to be collected on the canals, and shall prescribe such rules and regulations relative to their collection, and impose such forfeitures of money, for the breach thereof, as from time to time they shall judge reasonable; provided no forfeiture for a single offence shall exceed the sum of twenty-five dollars.

Laws of 1820, 189, § 20; 1826, 360, § 5; 1827, 224, § 13.

Rates of toll.

§ 71. The provisions of the twenty-sixth and twenty-seventh sections of this Title, shall be construed to embrace all rates of toll, rules and regulations, so fixed and prescribed.

Laws of 1827, 224, § 15; see Laws of 1835, ch. 21.

Remission of penalties.

§ 72. The canal board shall have power to remit, either absolutely, or upon such conditions as they shall prescribe, any forfeitures that may be incurred, by a violation of any of the provisions of this Title, or of any of the rules and regulations established by themselves, or the canal commissioners.

Proceedings.

§ 73. No such forfeitures shall, however, be remitted, unless on the petition, in writing, of the party liable thereto, supported by due proof of the facts, upon which the claim for a remission shall be founded; and every such petition, with the accompanying proof, and the order of the board thereon, shall be preserved and filed in the office of the comptroller.

See Laws of 1837, ch. 451.

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Estimates for repairs.

§ 74. Whenever the canal board shall have received from the canal commissioners, the plan of any extraordinary repairs or improvements on the canals, and an estimate of the expense thereof, if such estimate shall not exceed the sum of thirty thousand dollars, they may direct such repairs or improvements to be made; but if the estimated expense shall exceed that sum, they shall report the plan and estimate, together with their opinion thereon, to the legislature.

Surplus waters.

§ 75. Whenever in the opinion of the board, any water may be spared from any state canal, or works connected therewith, without injury to the navigation or safety of such canal, and the persons entitled to the first privilege of taking such water, shall not avail themselves thereof, or there shall be no persons so entitled, the board may order a sale of such surplus water, for a term of years, in their discretion, to the person who shall bid the highest annual rent therefor.

Laws of 1825, 399, § 3; 1826, 363, § 31; See Laws of 1849, ch. 348; ch. 352; 1829, ch. 368.

Extra allowance.

§ 76. The canal board may make such an extra allowance as they may judge reasonable, to any contractor, for work performed, or to be performed on the canal, and direct the same to be paid by the canal commissioners, or by the commissioners of the canal fund.

Laws of 1826, 363, § 33; 1827, 373, § 1; see Laws of 1849, ch. 348.

In what cases.

§ 77. Such extra allowance shall not be made for, or include, losses resulting to the contractor from the unfavorable terms of his contract, but shall be confined to an indemnity for extra expenses and labor, in constructing the work contracted for,

occasioned either by new directions given by a canal commissioner, engineer, or superintendent of repairs, after the making of the contract, or where, in consequence of the work proving to be of a different character or description than it was contemplated to be by the commissioners or engineer, at the time of the making of the contract.

Laws of 1826, 363, § 33; 1827, 373, § 1.

§ 78. Every contractor claiming an extra allowance, shall present a petition, in writing, to the canal board, stating the facts on which his claim is founded, and the sum demanded as an indemnity, and shall support his petition by such proof as the board shall require; and every such petition, with the proof in support thereof, and the order of the board thereon, shall be preserved and filed in the office of the comptroller.*

Proceed-
ings.

See Laws of 1829, ch. 368; 1835, ch. 21; 1837, ch. 451; 1840, ch. 201, 292, 358; 1841, ch. 160; 1849, ch. 348, 352; 1854, ch. 227, 332, 382; 1857, ch. 207; 1858, ch. 211.

ARTICLE FIFTH.

OF WATER PRIVILEGES, AND THE SALE OF SURPLUS WATERS.

Sec. 79. Commissioners to agree with owners of hydraulic privileges for surplus waters.

80. When surplus waters are created, who entitled to use them.

81. Value of such waters to be estimated by appraisers.

82. If such owners refuse to comply with conditions, not to have use of waters.

83. Commissioners may resume use of waters when necessary.

84. Owner of works, not to be affected until his damages are paid.

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85. Owners of hydraulic works, in certain cases entitled to surplus waters.

86. Owners of land over which surplus water flows, entitled to surplus water.

87. Value how ascertained, &c.

88. How right of such owners to surplus water may be waived or forfeited.

89. Qualifications of preceding sections.

90. Manner and terms of sale, of surplus waters.

91. Canal board to revoke former leases.

92. Where there is a partial resumption, purchaser entitled to what is not resumed.

93. Where stone walls to be made, and the manner of erecting.

94. Waste-gates, sluice, slide, &c., when and where to be erected.

95. Penalty for injuring or lowering stone walls.

96. Persons owning water privileges on the canals, how to discharge the waters.

97. Commissioners, or party grieved, may bring writ of error.

98. Duty of clerk of supreme court, upon being served with writ of error.

§ 79. Whenever it shall become necessary to secure to any state canal, an additional supply of water, the canal commissioners may agree with the proprietors of hydraulic privileges, affected by their proceedings, relative to the use of the water privileges to be created, and of the surplus water, in such manner as they shall deem most beneficial to the state.

Agree-
ments re-
specting.

Laws of 1823, 269, § 2; Ib., 132, § 1 & 2.

§ 80. Whenever the canal commissioners shall construct a dam across any river or creek, to raise a head of water for the use of a canal, by means whereof, any works adjacent to such river or creek, in which water power is employed, before such time legally used, may be benefited without prejudice to the

Who en-
titled to, in
certain
cases, and
conditions.

* Laws of 1826, ch. 368, contain three additional provisions relative to the canal board.

TITLE 2.

canal, the owner of such works, for their benefit, shall be entitled to the use of the surplus water, upon his complying with the following conditions:

1. He shall construct, under the direction of the canal commissioners, a good and substantial race-way and gate in such dam, to draw off as much of the surplus water as his works may require.

2. He shall give such security to the people of this state, as the canal commissioners shall deem sufficient, to keep such gate and race-way in complete repair so as to prevent any waste of water.

3. He shall, within ninety days after such race-way and gate shall be completed, apply to the canal appraisers, and request them to ascertain the benefits accruing to him, from the use of such dam, or other erection.

4. Within ninety days after such benefits shall have been so ascertained, he shall pay the sum at which they shall be estimated, into the treasury.

Laws of 1823, 269, § 2; Ib., 132, § 1 & 2.

Appraisals. § 81. It shall be the duty of the canal appraisers, when so required, to make a fair estimate of the benefits so accruing to such owner, and to make a return thereof, without delay, to the treasurer of the state.

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Laws of 1823, 269, § 2; Ib., 132, § 1.

Duty of owners.

§ 82. If the conditions, as above specified, shall not be fulfilled by such owner, it shall be the duty of the acting canal commissioner, to close any race-way or gate such owner may have constructed; nor shall the owner again open the same, or any other in the same dam, unless upon the performance of the conditions so imposed.

Laws of 1823, 269, § 2; Ib., 132, § 1.

When to be resumed.

§ 83. The canal commissioners may resume the privileges so granted, whenever, in their judgment, the surplus water, or a portion thereof, shall become necessary for the use of the canal; but whenever such privileges shall be so resumed, the sum paid into the treasury therefor, shall be refunded.

Laws of 1823, 269, § 2; Ib., 132, § 1.

Construction of this article.

§ 84. Nothing in this article contained, shall be construed to deprive the owner of hydraulic privileges, of any rights possessed by him, prior to any grant from the state under this Article, unless his damages from the loss of such rights, shall be duly assessed and paid.

Laws of 1823, 269, § 2; Ib., 132, § 1. See Laws of 1838, ch. 289.

Preference in the use of water.

§ 85. In all cases where water or mill privileges, before legally used, have been or shall be injured by reason of the diversion of the water to the use of either of the canals, the persons so injured shall be entitled to the first privilege of taking water for the use of their works, on the terms and conditions above specified, from any work constructed for the purpose of such diversion, or from the canal itself benefited

thereby, when there is a surplus of water, and with the consent of the canal commissioners.

ART. 5.

Laws of 1823, 269, § 2; Ib., 132, § 1.

§ 86. Whenever the canal board shall order a sale of surplus waters, pursuant to the provisions of the seventy-fifth section of this Title, to the use of which no person shall be first entitled as the owner of works before such time legally used, according to the preceding eightieth section, the owners of the land upon which such surplus waters shall flow, and the owner of land adjoining any dam erected by the canal commissioners, by which surplus waters shall be created, shall be entitled to the first privilege of taking such waters, subject to the provisions of this Article so far as the same may be applicable; and the canal commissioners shall have the same powers in relation to all such surplus waters, as are herein given in respect to surplus water by which hydraulic privileges are benefited.

Other persons entitled first to surplus waters.

Act of April 21, 1828, 426, chap. 317.

§ 87. Whenever the owner of any land over which surplus water shall flow, or the owner of land adjoining any dam by which surplus water shall be created, entitled according to the last section, to the use of such water, shall apply for a lease of the same, the canal commissioners shall direct the canal appraisers to estimate the value of the use of such water; and the said appraisers shall include in such estimate, the value of any use of such water, which such owner may have had previous to obtaining a lease therefor; and within ninety days after such appraisal shall have been made, and notice thereof given to such owner, he shall pay the amount of the value of such previous use, into the treasury.

Value how ascertained.

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Value of former use of surplus waters.

Act of April 21, 1828, 426, chap. 317.

§ 88. If any owner of land over which such surplus water shall flow, or if any owner of land adjoining any dam by which surplus water shall be created, shall omit for three months after being notified by the acting canal commissioner to that effect, to apply for a lease of such water, or shall neglect to comply with any of the provisions of this Article, the canal board shall order a sale of such surplus water.

How right waived or forfeited.

Act of April 21, 1828, 426, chap. 317.

§ 89. But in cases, where in the opinion of the acting canal commissioner, it would be inexpedient to close any race-way or gate, it shall not be compulsory on him to do so; and where, in the opinion of the canal board, a lease of surplus waters, will not confer on the lessee, any right or authority to use the same without the consent of the owner of the land over which such surplus water shall flow, they shall not authorise the letting of the same, without evidence, that the consent of such owner has been given to such use.

Qualifications of preceding sections as to race-ways.

As to sale of surplus water.

Act of April 21, 1828, 426, chap. 317.

§ 90. Whenever a sale of surplus water shall have been directed by the canal board, the acting canal commissioner

Proceedings on sale of water.

TITLE 2.

within whose line such water shall fall, shall proceed to sell and convey such surplus water in the manner following :

1. Each privilege of using such water shall be sold separately, at public auction, to the person bidding the highest annual rent therefor.

2. The place of sale shall be in the vicinity of the place where the water may be most conveniently used.

3. A notice, stating the time and place of the sale, and describing the waters to be sold, shall be published twice in each week, for six weeks in succession, immediately preceding the sale, in the state paper, and once in each week for the same time, in each of the newspapers printed in the county where the water is to be sold.

4. A lease for such a term of years as shall have been directed by the canal board, shall be executed by the commissioners, in the name of the people of this state, to the purchaser, and in such conveyance, the rent bid by such purchaser, shall be reserved.

5. The conveyance shall contain a covenant, that the rent therein reserved, shall be paid annually to the commissioners of the canal fund, and a condition, that if such rent shall remain unpaid for one year after it shall become due, the grant or lease shall become forfeited to the state.

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6. The conveyance shall also contain a reservation of the right, wholly to resume the water so conveyed, and the privileges thereby granted, and to control and limit the use of such water and privileges, whenever, in the opinion of the canal board, or of the legislature, the necessary supply of water for the use of any state canal, or the safety of such canal, or works connected therewith, shall render such resumption; control or limitation necessary; and a provision that where such resumption is made, or control or limitation imposed, no compensation or damages shall be allowed for any improvements or erections made in consequence of such grant or lease.

7. The conveyance shall contain a further reservation of the right of the state, without making any compensation to the purchaser, wholly to abandon or destroy the work, by the construction of which, such surplus waters shall have been created, whenever in the opinion of the canal commissioners, the occupation and use of such work, shall cease to be advantageous to the state.

8. A duplicate of such conveyance, under the hand and seal of the purchaser, shall be executed and delivered by him to the acting canal commissioner, who shall, without delay, procure the same to be recorded in the clerk's office of the county, in which the water sold shall be situated, and shall transmit it, when recorded, to the commissioners of the canal fund.

9. All the expenses attending the execution of the conveyances, and the recording thereof, shall be paid by the purchaser.

§ 91. When the canal board shall be satisfied that any lease of surplus waters granted by the canal commissioners, or either of them, before the twenty-first day of April, one thousand eight hundred and twenty-eight, is invalid, or conveys no right to use such waters, and may expose the state to claims for remuneration, they may revoke and annul such lease, and may direct the re-payment to such lessee, of any monies received on such lease, with interest from the time of such payment; which shall be paid accordingly, on the warrant of the comptroller, from the canal fund.

Act of April 21, 1828, 426, chapter 317.

ART. 5.
Canal board
when to re-
voke former
leases.

§ 92. Where there shall be a partial resumption only of the waters so sold, the purchaser shall be entitled to the use of the remaining water privileges for the residue of his term, on the payment of such reduced rent as shall be fixed by the canal board; but if he shall refuse to accept thereof at the rent so reduced, the privileges so remaining, shall be again sold by the canal commissioners, under the direction of the canal board.

See Laws of 1842, ch. 274.

Right of
purchaser.

§ 93. At every place, where waters are to be taken from any state canal, or work connected therewith, for hydraulic purposes, except at Black Rock, at the mouth of Tonnewanta creek, and at the locks at Lockport, and except where such waters are taken from a dam across a stream which is used as a feeder, or from a feeder not navigable, the canal commissioners shall construct a permanent wall or erection of stone laid in mortar, and cemented, of sufficient thickness to ensure the safety of the canal, and such wall shall not in any case be more than six inches lower than the top-water line of the canal.

Laws of 1826, 362, § 26; 1827, 223, § 11.

Walls to be
erected.

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§ 94. No waste-gate, sluice, slide, water-gate or other passage, shall be made in connection with any wall or erection over which water is to be drawn, in such a manner that the same can be opened, or that water can be drawn by, through or under the same, to the use of any mill or machinery, using water from the canal, except at the four places above excepted.

Laws of 1826, 362, § 26; 1827, 223, § 11.

No waste-
gates, &c.,
in them.

§ 95. Any person who shall willfully make, or cause to be made, any breach, hole or passage in, through or under any such wall or erection, or who shall lower the same, or cause it to be done, for the purpose of drawing water to any mill or machinery, or the effect of which, shall be, to lower the water in the canal, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment; the fine for each offence not to exceed two hundred and fifty dollars, nor the imprisonment six months.

Laws of 1826, 362, § 27.

Penalties.

§ 96. Every person now owning any water privilege, upon either of the canals, or hereafter purchasing any such

Water how
discharged.

TITLE 2.

privilege of the state, shall discharge the waters owned by him at such place or places, as the canal commissioners shall direct, whenever the navigation or safety of the canal, or any of its works, shall be benefited by such direction.

Laws of 1826, 362, § 29.

Error from
decisions
of supreme
court.

§ 97. The canal commissioners, or the party aggrieved, may bring a writ of error from any decision of the supreme court hereafter to be made, touching any claim made against the state, for deprivation of any right, or pretended right, to the use of any water or water privileges, or fisheries, in consequence of the construction of any canal or feeder, now or hereafter to be made, whether the decision be made upon any case arising on a *mandamus* or otherwise; and although no pleadings were had or issue joined in the cause.

Laws of 1827, 230, § 42.

Proceed-
ings.

§ 98. On service of such writ of error it shall be the duty of the clerk of the supreme court, to make out a transcript of the record, or papers and documents, on which such decision was had, and to cause the same to be filed with the clerk of the court for the trial of impeachments and the correction of errors, in twenty days after service of the writ.

Laws of 1827, 230, § 42.

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ARTICLE SIXTH.

OF THE SUPERINTENDENTS OF REPAIRS, AND THE COLLECTORS OF TOLLS.

SEC. 99. Superintendents of repairs, and collectors shall give bond.

100. Duty of superintendent.

101. Shall be under direction of commissioners.

102. To account to comptroller; duty of comptroller in case of neglect, &c.

103. Account to be certified by canal commissioners.

104. Collectors to keep account of tolls received.

105. To make abstracts of daily receipts, and to send them to comptroller weekly.

106. To deposit monies every two weeks, in banks to be named by canal board.

107. Banks to transmit monthly account to comptroller.

108. Collectors may be authorised to refund tolls erroneously paid.

109. In case collector omits to deposit tolls, comptroller to issue warrant.

110. Sheriff to whom it is directed, immediately to execute it.

To give
bonds.

§ 99. Each superintendent of repairs and every collector of tolls, before he shall enter on his official duties, shall execute and file in the office of the comptroller, a bond for the faithful execution of his trust, in such penalty and form as the canal board shall direct, and with such sureties as the comptroller shall approve.

Duty of
superinten-
dents.

§ 100. It shall be the duty of each superintendent, under the direction of the canal commissioners, to keep in repair such sections of the canals and works connected therewith, as shall be committed to his charge: to make all necessary contracts for that purpose, and faithfully to expend all such monies as shall be placed in his hands, by the canal commissioners or the commissioners of the canal fund.

Laws of 1826, 361, § 2; 4 H., 633.

§ 101. Each superintendent shall be under the direction of the canal commissioners and especially of the acting commissioner, having charge of the line of the canal, on which such superintendent is employed.

Laws of 1827, 224, § 14.

§ 102. Each superintendent shall, as often as once in sixty days, render his account to the comptroller, who shall audit the same; and if any superintendent shall omit to render his account, or his account as rendered be not satisfactory, the comptroller shall notify the canal board and the commissioners of the canal fund thereof; and no further advances of money shall be made to such superintendent, but he shall be immediately removed from office.

Laws of 1827, 224, § 13.

§ 103. Before any superintendent's account for expenditures shall be presented to the comptroller, the canal commissioner having charge of that part of the canal on which such superintendent is employed, shall certify on such account, that he has examined the same; that the several disbursements specified therein, were made under his direction on the canal, or for repairs necessary to be made thereon; and that he believes such disbursements to be proper and reasonable, and to have been made, as charged.

Laws of 1827, 224, § 13. See Laws of 1847, ch. 100; 1851, ch. 57; 1853, ch. 52.

§ 104. The collectors of tolls shall keep accounts of all tolls received by them, in such form as shall be prescribed from time to time by the comptroller, and shall deposit such original books of account, together with such clearances and other papers as he shall require, in the comptroller's office, on or before the tenth day of January in each year.

Laws of 1826, 360, § 7.

§ 105. They shall also make abstracts from such books showing the amount of tolls received by them each day, and transmit the same by mail, to the comptroller, four times in each month, on such days as he shall direct.

Laws of 1826, 360, § 8.

§ 106. They shall deposit the monies received by them for tolls, to the credit of the treasurer of this state, at least once in two weeks, in such banks as may, from time to time, be designated by the canal board.

Laws of 1826, 360, § 9.

§ 107. The comptroller shall require the several banks so designated, to transmit to him, by mail, a monthly account of deposits by the collectors of tolls; and if any bank shall neglect to comply with such requisition, or he shall doubt its solvency, he shall direct such deposits to be made in such other bank as he shall designate, until the further order of the canal board.

Laws of 1826, 360, § 11.

ART. 6.
Ib.

To account.

How verified.

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Duty of collectors.

Abstracts.

Deposits in banks.

Duty of banks.

**TITLE 9.
Refunding
tolls.**

§ 108. The collectors may be authorized to refund tolls erroneously paid to them, or which equitably ought to be refunded, under such regulations as shall be prescribed by the comptroller.

Laws of 1826, 360, § 12.

**Proceed-
ings against
collectors.**

§ 109. If any collector of tolls shall neglect to deposit, according to law and the directions of the comptroller, the monies, that, from the abstracts of returns made to the comptroller, he shall appear to have collected for tolls, the comptroller may issue a warrant, under his hand and seal, directed to the sheriff of any county where such collector or any of his sureties may be found, thereby commanding such sheriff to cause the amount of tolls in the hands of such collector, (or such part thereof as the comptroller shall direct by the warrant,) to be made and levied of the goods and chattels, lands and tenements of such collector; and in case the same shall not be sufficient, then of the goods and chattels, lands and tenements of the sureties of such collector; and to return the money, together with the warrant and his doings thereon, to the comptroller, within sixty days from the date thereof.

Laws of 1826, 360, § 18.

1b.

§ 110. The sheriff to whom such warrant shall be directed, shall immediately cause the same to be executed; and may demand and collect the same fees for executing the same, as are allowed by law for the service of executions issuing out of the supreme court.

Laws of 1826, 360, § 19. See Laws of 1847, ch. 100; 1851, ch. 57; 1853, ch. 52.

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ARTICLE SEVENTH.

REGULATIONS AND PENALTIES CONCERNING THE NAVIGATION OF THE CANALS, AND THE COLLECTION OF TOLLS.

- SEC. 111. Owners of canal boats to give certificate of registry to collectors.
 112. If master of boat is changed, new master to give one.
 113. Collector to give receipt for certificate.
 114. Comptroller to make register of boats navigating canals.
 115. When boat is transferred, comptroller to alter register.
 116. Comptroller to send collectors copy of register.
 117. No clearance granted without proof of registry.
 118. Persons named in certificate, deemed owners of boats.
 119. Penalty for changing name of boat, or for reporting false name.
 120. No boat to have a clearance without name on it.
 121-123. Masters of boats carrying property to show bills of lading to what collectors.
 124 & 125. Penalty for exhibiting a false bill, or omitting to show true one.
 126. Collector may compel master to verify bill by oath.
 127. Every boat navigating canal, to have a separate clearance.
 128. No boat to proceed beyond place for which it was cleared, until clearance shown.
 129. If no collector at such place, clearance where to be delivered.
 130. Penalty for not delivering clearance.
 131. Collectors to give copies of clearances.
 132. Such copy to have effect of original; collector's fees for making it.
 133. Tonnage on canals to be charged according to real weight.
 134. When articles to be weighed, &c.
 135. Master to pay expense of weighing, &c.

- Sec. 136. Collector may detain boat and cargo until tolls, &c., are paid.
137. If payment be refused, collector may distrain and sell property.
138. Surplus arising from sale, paid to master of boat.
139. Statement of passengers to be furnished by masters.
140. What first statement delivered, to contain.
141. If the boat has conveyed no passengers, master to present affidavit of fact.
142. If more than one person has had charge of boat, each to make statement, &c.
- 143 & 144. Collector to transmit such statement to comptroller; penalty on master for not furnishing them; boat may be refused a clearance.
145. Collector receiving statement, &c., to give acknowledgment.
146. Certificate of comptroller, that no statement, &c., has been received, presumptive evidence thereof.
147. Tolls on passengers in boats not belonging to a line, &c., how to be paid; penalties.
148. Commutation for tolls upon passengers.
149. Commissioners of canal fund to prescribe time of payment of commutation.
150. Bill of lading delivered, or payment of tolls to agent of collector.
151. Collector, &c., to assign births to boats.
152. No boat to go over four miles an hour; penalty for so doing.
153. When passage boat overtakes float, latter to let former pass.
154. When two floats meet, each to take the right.
155. When two floats meet, in certain places, which shall stop until other passes.
156. Penalty for violating either of three preceding sections.
157. Floats within 100 yards of lock, to pass before any float on another level.
158. Questions of precedence in passing locks, to be decided by lock-keeper.
159. Penalty for not conforming to such decision.
160. Penalty for using shafts pointed with iron, on canal.
161. Decked boats to have knife fixed on bow or stem.
162. Penalty for not complying with above provision.
163. Penalty for obstructing canal, by mooring boats, &c.
164. Penalty for obstructing it by sinking any boat, &c., &c.
165. Boats, &c., found floating, or any articles on tow-path, to be seized and sold.
166. If owner of article pays costs, &c., not to be sold.
167. Awaits, how accounted for.
168. Proceeds of sale to be paid to owner, after deducting costs, &c.
- 169 & 170. Forfeitures for taking rails, posts, &c., from banks of canals.
171. Penalties, &c., chargeable on boat or float.
172. When such penalty is sued for, process to direct officer to detain boat, &c.
173. If defendant prevail, to be released; if judgment recovered against him, to be sold, if amount, with costs, &c., not paid.

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§ 111. The owners of every boat navigating the canals, shall subscribe and deliver to the collector of whom the first clearance for such boat shall be demanded, a certificate to be entitled "a certificate of registry," containing the names of such owners, and their respective places of abode, and also the name of the boat, and of some place as that where it is owned; if the owners shall reside out of this state, the certificate of registry shall be signed and delivered by the master of the boat, as the owner thereof.

Certificate
of registry.

Laws of 1827, 225, § 18 to 22.

§ 112. If the master of a boat of which the owners reside out of the state, shall be changed after he shall have delivered such certificate, the new master shall sign and deliver a proper certificate of registry, to the collector of whom he shall first require a clearance.

Laws of 1827, 225, § 18 to 22.

TITLE 9.
Duty of collector.

§ 113. Every collector receiving a certificate of registry, shall sign an acknowledgment of the receipt thereof, and deliver the same to the master of the boat; and shall, without delay, transmit the certificate received, to the comptroller.

Laws of 1827, 225, § 18 to 22.

Duty of comptroller.

§ 114. The comptroller shall make a register of all boats navigating the canals, which shall be kept with the books and papers in his office relative to the canals, and be open to inspection during office hours. The name of no registered boat shall be changed, without the order of the comptroller.

Laws of 1827, 225, § 18 to 22.

Register, how changed.

§ 115. If any persons residing within the state, claiming to be the owners of a registered boat, by a transfer from its former owners, shall produce to the comptroller, due proof of such transfer, and shall deliver him a new certificate of registry signed by themselves, it shall be the duty of the comptroller to change the register of such boat, so as to correspond with such new certificate.

Laws of 1827, 225, § 18 to 22.

Copies to collectors.

§ 116. The comptroller shall, from time to time, transmit to the several collectors, a certified copy of the register of boats in his office, and of the several changes made therein.

Laws of 1827, 225, § 18 to 22.

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Clearances, when granted.**

§ 117. No clearance shall be granted to any boat, unless the collector, of whom it is required, shall have evidence that such boat is duly registered; or if it be not registered, until the master thereof shall have delivered to such collector, a proper certificate of registry, or have exhibited to him, the receipt of some other collector, for such certificate.

Laws of 1827, 225, § 18 to 22.

Who owners.

§ 118. The persons specified in its certificate of registry, as the owners of a boat, shall be deemed in law the true owners thereof, for all purposes of enforcing the collection of tolls, and the execution of the rules and regulations for the navigation or maintenance of the canals.

Laws of 1827, 225, § 18 to 22.

Penalties.

§ 119. Every owner of a boat who shall change its name from that stated in its certificate of registry, then in force, without the order of the comptroller, and every master who shall enter or report such boat, at any collector's office, by a different name than that so stated, shall, for every such offence, forfeit the sum of twenty-five dollars.

Laws of 1827, 225, § 18 to 22.

Name to be on each boat.

§ 120. No boat shall receive a clearance, or be permitted to pass on any canal, which shall not have the name thereof, and of the place where it is owned, corresponding with its certificate of registry then in force, painted in some conspicuous and permanent part of the outside of the boat, in letters of at least four inches in height.

Laws of 1827, 225, § 18 to 22.

§ 121. Every master of a boat conveying property on a canal, shall exhibit to the several collectors hereafter mentioned, a just and true account, or bill of lading, of such property, signed by himself and by the consignor thereof, containing,

ART. 2.
Bill of
lading; its
contents.

1. The name of each place on the canal, where any portion of such property was shipped, and of the place for which it is intended to be cleared.

2. A statement of the names, description and weight of all the articles, of such property on which toll is charged by the ton, of the number of articles, on which toll is charged by the number, and of the feet of each article, on which toll is charged by the foot.

3. A specification of the weight or quantity of each article, where a different rate of toll is charged on different articles, on which toll is so computed.

4. No clearance of a boat and cargo shall be granted or issued by any collector of canal tolls, except upon the production to him of a bill of lading containing the above particulars.

Laws of 1827, 220, § 1; 1859, ch. 16; 16 B., 79.

§ 122. Every such account or bill of lading shall be exhibited,

To whom
to be ex-
hibited.

1. To every collector of whom a clearance shall be required.

2. To every collector whose office shall be the next in order, in the course of the voyage, to the place where a clearance shall have been given.

3. To every collector at a place where any portion of the cargo shall be unladen, or any additional cargo be received; or if there be no collector at such place, to the collector whose office shall be next in order in the course of the voyage.

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4. To every other collector who shall demand such account, or bill of lading, to be exhibited.

Laws of 1827, 220, § 1.

§ 123. If there shall be no collector's office at the place where any articles shall be laden, nor at the place of their delivery, nor at any intermediate place, the master of the boat shall, within ten days after the delivery of such articles, exhibit the bill of lading thereof to the collector whose office shall be nearest to the place of such delivery, and shall pay to such collector the tolls due on such articles; and every master who shall omit to exhibit such bill, and to pay such tolls, within the period so limited, shall, for every offence, forfeit the sum of twenty-five dollars.

To whom
to be ex-
hibited.

Laws of 1827, 220, § 1.

§ 124. Every master of a boat navigating a canal, who shall omit to deliver a true bill of lading to any collector when required, or shall deliver any articles mentioned in a bill of lading, at a place beyond that to which they shall be cleared, shall forfeit the sum of twenty-five dollars. Every person who shall sign or deliver to any collector, a false bill of lading, shall pay, on all property omitted in such false bill, treble the

Penalties.

TITLE 2.

toll usually charged on such property, to any collector who shall be satisfied of such omission, for the whole distance such property is conveyed on a canal.

Laws of 1827, 220, § 1.

Penalties.

§ 125. Every person who shall knowingly sign or deliver a false bill of lading, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both: the fine not to be less than three times the value of any property omitted in such bill, and the imprisonment not to exceed two years.

Laws of 1827, 220, § 1.

Bills how verified.

§ 126. Every collector receiving a bill of lading, may require the master exhibiting it, to verify it by his oath, which such collector is authorised to administer.

Clearances.

§ 127. Each boat navigating the canals shall have a separate clearance, and no part of the cargo of any boat shall be cleared to a place, beyond that, to which the boat is cleared.

Laws of 1827, 224, § 16.

Regulation of boats.

§ 128. No boat shall proceed beyond the place to which it shall be cleared, nor unlade any article of its cargo before, or after, its arrival at the place for which such articles are cleared, nor proceed beyond such place, until the master thereof, shall have delivered the clearance of such boat or articles, to the collector, at the place for which they are cleared.

Laws of 1827, 224, § 16.

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Id.

§ 129. If there be no collector at such place, the master shall deliver the clearance of the boat or articles, to the last collector whose office shall be passed by the boat in the order of its voyage, and shall receive a permit from such collector, to proceed to the place to which they are cleared.

Laws of 1827, 224, § 16.

Penalty.

§ 130. Every master who shall omit to deliver a clearance to the collector, to whom the same ought to be delivered, shall forfeit the sum of twenty-five dollars.

Laws of 1827, 224, § 16.

Collectors to give copies.

§ 131. Every collector issuing any clearance, or in whose office any clearance is on file, shall, whenever requested, give a certified copy thereof, with the additional cargo entered thereon, and the several endorsements of other collectors.

Laws of 1827, 224, § 17.

Effect of copy; fees for making.

§ 132. Such certified copy shall have the same validity and effect, as the original clearance, of which it is a copy; and every collector shall demand and receive for such certified copy, not exceeding two folios, from the person requesting the same, six cents, and twelve and a half cents for all copies exceeding two folios, and shall account to the commissioners of the canal fund, for all sums which shall be so received at such time, and in such manner, as the comptroller shall direct.

Laws of 1827, 224, § 17.

§ 133. The tonnage of all articles conveyed on either of the canals, on which toll may be charged by the ton, shall be ascertained and charged, according to the real weight of such articles.

ART. 7.
Tonnage.

Laws of 1820, 187, § 13 14.

§ 134. Whenever a difference as to the amount of tolls to be paid, shall arise between a collector of tolls and the master of a boat, the collector shall detain the articles on which the tolls are charged, and the boat containing them, and shall weigh, count, or measure, the articles, as the case may require; and if it shall be found, that their weight, number, or feet, exceed the amount contained in the bill of lading thereof, the collector shall charge tolls, according to the weight, number, or feet thus found.

Articles
when to be
weighed.

Laws of 1820, 187, § 13 14.

§ 135. In every such case, the master shall pay to the collector, the expense of such weighing, counting or measuring, at the rate of twenty-five cents for every ton weighed; of five mills a-piece, of articles paying toll by the number; and of five cents for each hundred feet, of articles paying toll by the foot; and such expenses shall be chargeable on such articles, and on the boat containing them.

Expense
how paid.

Laws of 1820, 187, § 13 14.

§ 136. The master of every boat shall be liable for the payment of tolls and expenses; and it shall be the duty of every collector of tolls to detain all articles on which tolls or expenses are chargeable, and each boat containing them, until such tolls or expenses shall be paid.

Payments
how en-
forced.

Laws of 1820, 189, § 18.

§ 137. If such payment be refused, the collector shall detain so much of the property detained as shall be sufficient to satisfy the charges thereon; and at the expiration of eight days, if such charges shall remain unpaid, he shall expose to sale the property distrained, at his usual place of receiving tolls, and shall sell the same at public auction, to the highest bidder.

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Id.

Laws of 1820, 189, § 18.

§ 138. Any surplus arising from the sale, after the payment of the charges and of the costs of distress and sale, shall be paid on demand to the master of the boat, or the owner of the property distrained.

Surplus.

Laws of 1820, 189, § 18.

§ 139. Every master of a boat which usually runs on the canal night and day, or which belongs to any regular line of packet or freight boats, shall, during each navigable season on the canal, as often at least as once in thirty days, and oftener, if required by the canal board, and under such regulations as that board shall establish, deliver to some collector of tolls a statement of passengers, and shall verify

Statements
of passen-
gers in cer-
tain cases.

TITLE 9.

the same under oath, to be administered to him by such collector; and at the same time shall pay to such collector, the lawful tolls on the passengers mentioned in the statement.

Laws of 1827, 226, § 23.

Contents of first statement.

§ 140. The first statement so delivered, shall contain the names of all the passengers conveyed in such boat, from the commencement of its running in that season, until the delivery of the statement, and the distance to which each passenger was carried; and each subsequent statement shall contain the names of all the passengers, and the distance to which each was carried in such boat, since the time embraced in the last previous statement.

Laws of 1827, 226, § 23.

When affidavit to be made.

§ 141. If it shall happen, that during the time for which a statement is required, no passengers shall have been conveyed in such boat, the master thereof shall present to some collector an affidavit to be sworn to before such collector, that no passenger has been conveyed in such boat, during the time specified therein.

Laws of 1827, 226, § 23.

Different masters.

§ 142. If it shall happen that different persons have been masters, or had charge of any boat, for the time during which the statement or affidavit above mentioned is required, each person shall furnish such statement or affidavit for such portion of the time, as such boat was under his control, or management.

Laws of 1827, 226, § 23.

Collector's duty; penalty on masters, &c.

§ 143. The several collectors shall transmit to the comptroller, the several affidavits and statements relative to passengers, received by them; and every master who shall neglect to furnish the affidavit or statement, or to pay the toll on any passengers, by law required, and every owner of such boat, when such neglect occurred, shall for each offence forfeit the sum of twenty-five dollars.

Laws of 1827, 226, § 24.

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Further penalty.

§ 144. The commissioners of the canal fund may, in their discretion, prohibit such boat from receiving a clearance and navigating the canals, until such statement or affidavit be furnished, and the tolls paid.

Laws of 1827, 226, § 24.

Collectors to acknowledge statement, &c.

§ 145. Every collector receiving such a statement, or affidavit, relative to passengers, shall give to the person from whom he received the same, a written acknowledgment thereof.

Laws of 1827, 226, § 25.

Evidence of neglect to make statement.

§ 146. A certificate made by the comptroller, under the seal of his office, after thirty days from the time when such a statement or affidavit ought to be made, that no statement or affidavit in respect to any particular boat, for the time particularly stated therein, has been received at his office,

shall be presumptive evidence, that no such statement or affidavit has been made by the master of such boat for the time specified in the certificate.

Laws of 1827, 226, § 25.

§ 147. Every master or person having charge of any boat navigating a canal, which does not usually run in the night time, or which does not belong to any regular line of packet or freight boats, shall pay the lawful tolls on all passengers conveyed in such boat, in the same manner as he is required to pay toll on property conveyed; and every such master who shall omit to give a just and true account of such passengers, to the collector, at the place where such passengers shall be received in such boat, or at the office next in order in the course of the voyage, after receiving the same, or who shall refuse to verify the same under oath, when required by any collector, or to pay the toll on such passengers, shall for every offence for the sum of twenty-five dollars.

Tolls on passengers in certain boats.

Laws of 1827, 226, § 23.

§ 148. The commissioners of the canal fund may, in their discretion, receive from the owners of any boat a specified sum by the year, for a license to carry passengers therein, as a commutation for tolls upon passengers.

Commutation for tolls.

Laws of 1827, 226, § 26.

§ 149. Such commutation shall be paid at such time and in such manner as the commissioners may prescribe; and no statement or affidavit relative to conveying passengers, shall be required from the master of any boat so licensed.

How paid.

§ 150. Any clerk duly authorised by a collector may perform all the duties and exercise all the powers legally appertaining to such collector, in his absence, and the collector shall be responsible for the acts of such clerk.

Clerks of collectors.

§ 151. It shall be the duty of every collector of tolls, and if there be no collector present, of every superintendent, to assign births to all boats when loading or unloading at any landing place on a canal whenever disputes shall arise concerning the same.

Births of boats.

Laws of 1827, 229, § 40.

§ 152. No float shall move on any canal faster than at the rate of four miles an hour without a permission in writing, signed by a majority of the canal commissioners; and for each violation of this provision the master shall forfeit the sum of ten dollars.

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Speed of boats, &c.

Laws of 1822, 320, § 4.

§ 153. Where a boat used chiefly for the conveyance of persons, shall overtake any other float, not used chiefly for that purpose, it shall be the duty of the master of the latter to give to the former, every practicable facility for passing, and whenever it shall become necessary, to stop, until such passage boat shall have fully passed.

Preference in passing.

Laws of 1820, 186, § 10.

**TITLE 9.
Boats meeting.**

§ 154. Where any float, in passing on either of the canals, shall meet with any other float, it shall be the duty of the master of each, to turn out to the right hand, so as to be wholly, on the right side of the centre of the canal.

Laws of 1820, 186, § 9.

1b. § 155. Where any floats shall approach any place on either of the canals, which is less than thirty feet wide on the surface, or which will not safely permit their passing, it shall be the duty of the master of the float going from the navigable waters of the Hudson river, to stop at such distance from such narrow place, as may be convenient for the float going towards such navigable waters to pass through such narrow place, and there to wait until such passage is effected.

Penalties. § 156. Every master or boatman violating any provision of the three sections immediately preceding, shall, for each offence, forfeit the sum of ten dollars.

Passing locks § 157. Every float, within one hundred yards of a lock, if on the same level that the water in the lock then is, shall be permitted to pass the lock, before any other float not on the same level.

Laws of 1827, 228, § 31.

1b. § 158. If, on the arrival of two or more floats at any lock, a question shall arise between their respective masters as to which shall be first entitled to pass, such question shall be determined by the lock-keeper, and each float shall be passed in the order and manner in which he shall direct.

Penalties. § 159. Every master, owner or navigator of any float refusing to conform to such determination of the lock-keeper, or detaining or unnecessarily hindering the passage of any float, through a lock, in violation of any provision of the two last sections, shall for each offence, forfeit the sum of twenty-five dollars.

Setting poles, &c. § 160. No person navigating either of the canals, shall be permitted to use therein any setting pole or shaft, pointed with iron or other metal; and if any person shall offend against this section, he shall, for every such offence, forfeit the sum of twenty-five dollars.

Laws of 1820, 188, § 16.

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Knife on bow.** § 161. No covered or decked boat, shall navigate any canal without a knife or sharp metallic instrument, so affixed upon the stem or bow of the boat, as to cut apart any tow rope, which otherwise might pass over such bow.

Laws of 1827, 222, § 7.

Penalty. § 162. Every owner or master of such boat, who shall neglect or refuse to comply with the above provision, shall, for each offence, forfeit the sum of twenty-five dollars.

Obstructing, &c. § 163. Every person who shall obstruct the navigation of any canal, by the improper mooring, management or conduct, of any boat or floating thing, shall, for every such offence, forfeit the sum of twenty-five dollars.

Laws of 1827, 221, § 3.

§ 164. If any person shall obstruct the navigation of any canal, by sinking any vessel, timber, stone, earth or other thing, to the bottom thereof, or by placing any obstruction on the towing path thereof, or on the bank opposite the towing path, he shall forfeit the sum of twenty-five dollars.

Laws of 1820, 185, § 6.

ART. 7.
Obstruct-
ing, &c.

§ 165. It shall be the duty of every canal commissioner, collector, superintendent or agent, employed on the canals, to seize all boats, rafts, logs, or any floating or sunken thing, which may be found in a canal; or any article not under the care or charge of any person, so found on the tow path thereof; and to sell the same at public vendue, after giving ten days' written notice of such sale, at two public places nearest to the place where such boat, logs, floating or sunken thing, may be found.

Boat, &c.,
to be
seized.

Laws of 1827, 221, § 4.

§ 166. If the owner of any article so seized, shall appear and claim the same, before the time of sale, and pay the cost of seizure and expense of removal, no such sale shall take place.

Owner may
stop sale.

§ 167. The avails of such sale shall be accounted for, by the officer making the same, if he be not a collector, to the nearest collector, who shall make returns thereof to the commissioners of the canal fund. If the sale be made by a collector, he shall account for the avails thereof, to the commissioners of the canal fund.

Avails, how
accounted
for.

§ 168. After such sale shall have been made, and the proceeds thereof paid to the commissioners of the canal fund, such commissioners may, on the application of the owners, and due proof of ownership, pay over such proceeds, after deducting the forfeiture, and all costs and reasonable charges thereon.

When paid
to owners.

§ 169. If any boatman, or person on board of any boat on any canal, shall take, without right, any rails, boards, planks or staves, from the banks or vicinity of the canal, the master of the boat shall forfeit, to the owner, treble the value of the property taken, and the possession of such property on board the boat, shall be presumptive evidence of such taking.

Taking
rails, &c.,
penalty.

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Laws of 1827, 228, § 33; 1830, ch. 117.

§ 170. Any person or boatman, who shall violate the provisions of the last section, shall forfeit twenty-five dollars to any person who will prosecute therefor.

Laws of 1828, 224, § 1 & 2, chap. 185.

§ 171. Every penalty and forfeiture, prescribed by this Article, and which is declared to be recoverable against the owner, master, boatman, navigator, or other person having charge of any boat or other float, when incurred, shall be chargeable on such boat or float, and a suit for the recovery thereof, may be brought against any person, being in the pos-

Boat liable
for penal-
ties.

TITLE 2.

session, or having the charge, of such boat or other float, at the time such suit is commenced.

Laws of 1827, 227, § 28 & 29. By Laws of 1830, chap. 117, firewood and fencing posts are included in sections 169 to 173.

Boat may
be detained.

§ 172. When any suit shall be prosecuted for any such penalty or forfeiture, the magistrate issuing the process, by a clause to be inserted therein, may direct the officer executing the same, to detain such boat or float, and the furniture and horses belonging thereto, until the suit shall be determined, or until adequate security shall be given for the payment of any judgment that may be recovered.

When re-
leased;
when sold.

§ 173. If such security shall be given, or the defendant in such suit shall prevail, the magistrate shall order the boat or other float and property detained, to be released; but if no such security shall be given, and a judgment shall be recovered for such penalty or forfeiture, and the same, together with the costs, shall not be immediately paid, an execution shall be issued, under which the property so detained, may be sold, in like manner, as if the judgment had been obtained against the owner thereof.

See Laws of 1855, ch. 534; 1858, ch. 247; 1847, ch. 278.

ARTICLE EIGHTH.

REGULATIONS AND PENALTIES CONCERNING THE PROTECTION AND MAINTENANCE OF THE CANALS.

SEC. 174. Where new roads cross canal, bridge to be erected and kept in repair.

175. Sanction of canal commissioner to model of bridge.

176. Penalty for proceeding to build bridge without such consent.

177. No wharf, &c., constructed on canal, without consent of a commissioner.

178. Penalty for constructing wharf, &c., without permission.

179. Penalty for wantonly opening any lock-gate, &c., destroying any bridge, &c.

180. Imprisonment in jail or state prison, for wilfully destroying any lock, &c.

181. Penalty for driving or riding any horse, &c., on tow path, except, &c.

182. Penalty for drawing water from canal at Lockport.

Bridges.

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§ 174. In all cases where a new road or public highway, shall be laid out by legal authority, in such direction as to cross the line of any canal, and in such manner as to require the erection of a new bridge over the canal, for the accommodation of the road, such bridge shall be so constructed, and forever maintained, at the expense of the town in which it shall be situate.

Laws of 1820, 183, § 1.

It.

§ 175. No bridge shall be constructed across any canal, without first obtaining for the model and location thereof, the consent in writing of one of the canal commissioners, or of a superintendent of repairs, on that line of the canal which is intersected by the road.

Penalty.

§ 176. Every person who shall undertake to construct or to locate such bridge without such consent, and shall proceed therein, so far, as to place any materials for that purpose, on

either bank of the canal, or on the bottom thereof, shall forfeit the sum of fifty dollars; and either of the commissioners, superintendents or engineers, shall be authorized to remove all such materials, as soon as they are discovered, wholly without the banks of the canal.

Laws of 1820, 183, § 1.

§ 177. No person, without the written permission of a canal commissioner, shall construct any wharf, basin or watering place, on any canal, or make or apply any device whatever, for the purpose of taking water from a canal; and every wharf, basin, watering place or device, constructed with such permission, shall be held during the pleasure of the canal commissioners, and be subject to their control.

Wharves,
basins, &c.

Laws of 1820, 186, § 11.

§ 178. Every person who shall construct any such wharf, basin, watering place or device, without permission, or who shall omit to conform to the directions of the commissioner granting such permission, shall for each offence forfeit the sum of twenty-five dollars; and in every such case, the canal commissioners may remove or destroy the construction illegally made, at the expense of the person making it.

Penalty.

Laws of 1820, 186, § 11.

§ 179. Every person who shall wantonly open or shut, or cause to be opened or shut, any lock-gate, or any puddle-gate or culvert-gate, thereof, or any waste-gate, or by any means prevent, or attempt to prevent, the free use of any such gate; and every person who shall wantonly break, throw down, or destroy any bridge, or fence, on a canal, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment; the fine for each offence, not to exceed one hundred dollars, nor the imprisonment six months.

Injuries
to gates,
bridges,
fences.

Laws of 1820, 186, § 7.

§ 180. Every person who shall wilfully break, throw down, or destroy any lock, bank, waste-weir, dam, aqueduct or culvert, on any canal, shall, upon conviction of such offence, be sentenced to imprisonment in the county jail or state prison, at the discretion of the court by whom he shall be tried. The imprisonment shall not be for less than one year, if in the county jail, nor for more than three years, if in the state prison.

Injuries to
docks, &c.

Laws of 1820, 186, § 8.

§ 181. Every person who shall lead, ride, or drive any horse, ox, ass, mule, or other cattle, upon the towing-path of a canal, or upon the bank opposite to such towing-path, shall, for each offence, forfeit the sum of five dollars; but this section shall not be construed to extend to persons towing boats or other floats, or conveying articles unladen or to be laden, from, or to, a canal.

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Driving
horses on
tow-path,
&c.

Laws of 1820, 183, § 2.

§ 182. Any person who shall open any gate, sluice, slide or

Drawing

TITLE 2.
water at
Lockport.

other passage, which now is or hereafter may be constructed to draw water round the locks at Lockport, for the purpose of drawing water from the canal to any mill or machinery of any kind whatsoever, or for any other purpose than the uses of the canal, shall, for every such offence, forfeit the sum of two hundred and fifty dollars.

Laws of 1826, 384, § 37. See Laws of 1839, ch. 207; 1840, ch. 372; 1836, ch. 384.

ARTICLE NINTH.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

- Seco. 183. Agents, &c., discharged from employment, to deliver up property.
- 184. In case of refusal, proceedings to take possession.
- 185. Who ineligible to office of superintendent, lock-keeper, &c.
- 186. Members of canal board, not to be interested in boats, &c.
- 187. Collectors, &c., exempt from military duty, and serving on juries.
- 188. Suits for penalties, &c., under this Title, to be in name of people.
- 189. If penalty not over fifty dollars, justice has jurisdiction.
- 190. Meaning of the terms "float" and "master."
- 191. Execution against whom judgment for penalty may be recovered.
- 192. Persons violating provisions of this Title, liable for damages and for penalty.
- 193. Comptroller to prepare forms, &c., and send them to officers on canals.
- 194. How much water to be taken into a level.
- 195. How waste-weirs and gates to be constructed.

Agents to
deliver up
property,
&c.

§ 183. It shall be the duty of every agent, toll collector, lock-keeper or superintendent, employed on any canal, and occupying any house, office, building, or land, belonging thereto, who shall be discharged from his employment; and of the wife and family, of every such person, who shall die in such employment; to deliver up the possession of the premises so occupied, and of all books, papers, matters or things belonging to the canals, acquired by virtue of his office, within seven days, after a notice shall have been served for that purpose, by the acting canal commissioner.

Laws of 1820, 187, § 12.

Proceed-
ings to
compel
delivery.

[1850]

§ 184. In case of a refusal or neglect to make such delivery, in either of the above cases, it shall be the duty of any justice of the peace, in the county where such premises shall be situate, upon application, to issue his warrant under his hand and seal, ordering any constable or other peace officer, with such assistance as may be necessary, to enter upon the premises so occupied, in the day-time, and remove therefrom all persons found in possession thereof, and to take into his custody all books, papers, matters and things there found, belonging to the canals, and to deliver the same to the acting canal commissioner, or his authorised agent; and the officer to whom such warrant shall be delivered, shall execute the same according to its purport.

Laws of 1820, 187, § 12.

Who inel-

§ 185. No person owning any hydraulic works dependent

upon the canals for their supply of water, or who shall be employed in or connected with any such works, or who shall be engaged in transporting property upon the canals, or who shall own, or be interested in, any boat, navigating the same, shall be employed as a superintendent, lock-keeper, collector of tolls, weigh-master, or other agent upon the canals.

Laws of 1828, 363, § 30.

§ 186. No canal commissioner or other member of the canal board, or superintendent, engineer, or person holding any appointment under the canal commissioners, or any one of them, or under any superintendent of repairs, or other officer, on the canals, shall hereafter become interested in any hydraulic work dependent on the canals for a supply of water, or become interested in any line of boats regularly navigating the canals, or shall, either directly or indirectly, become interested in any contract, on the canals, as a contractor, surety or otherwise, either in his own name or in the name of any other person, or shall, either directly or indirectly, derive any benefit from the ordinary or extraordinary expenditures on the canals, beyond his established compensation; and if any canal commissioner, member of the canal board, superintendent, engineer, or person holding any appointment under the canal commissioners, or any one of them, or under any superintendent of repairs, or other officer, on the canals, shall, at any time hereafter, become interested or derive any benefit, as aforesaid, he shall forfeit his office or appointment.

Laws of 1843, ch. 181.

§ 187. Every collector of tolls, the clerks of each collector, not exceeding two, having the collector's certificate that they are actually employed by him, and all superintendents of repairs, lock-tenders, inspectors of boats and weigh-masters, shall be exempted from the performance of military duty, and jury service, while actually engaged in their respective employments on the canals, while the same are navigable.

Laws of 1827, 227, § 27.

§ 188. All suits for penalties and forfeitures imposed in any Article of this Title, or for damages, in behalf of the state, shall be prosecuted in the name of the people of this state, by such persons and in such manner as the commissioners of the canal fund, in their regulations, shall direct; and all monies recovered therein, shall be accounted for and paid over to such commissioners.

Laws of 1827, 227, § 28.

§ 189. Every such penalty or forfeiture, not exceeding the sum of fifty dollars, may be recovered before any justice of the peace in any county.

Laws of 1827, 227, § 28.

§ 190. The term "float," as used in this Title, shall be construed to embrace every boat, vessel, raft, or floating thing,

ART. 9.
gible as collector, &c.

Officers not to be interested in boats or contracts.

Collectors, &c., exempt from certain duties.

Penalties how recovered.

Before whom.

Definition of "float" and "master."

TITLE II.

navigated on the canals, or moved thereon, under the direction of some person having the charge thereof; and the term "master," as so used, shall be construed to apply to every person, having for the time, the charge, control or direction, of any such float.

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Executions
for pen-
alties.

§ 191. If any person against whom any forfeiture shall be recovered under the provisions of this Title, shall not immediately pay the full amount of the judgment so obtained, the court by which such judgment shall be given, shall, without delay, issue an execution against his property or person, at the election of the party prosecuting the suit.

Penalty
no bar to
damages.

§ 192. The imposition or recovery of any penalty or forfeiture, imposed for the violation of any provision of this Title, shall not be considered a bar to the recovery of any damages, resulting from such violation, to the state or to individuals.

Forms.

§ 193. The comptroller shall prepare the forms of all clearances, bills of lading, statements, and other papers necessary to be used under the provisions of this Title, and shall from time to time, transmit the same to the different officers and agents on the canal, for whose use they may be required.

How much
water to be
taken.

§ 194. No more water shall be taken into any level of either of the canals, than shall be sufficient to supply such level during the days of the greatest business, and also to supply any other level of the canal, or other public work of the state, dependent upon such level for a supply of water.

Waste-
weirs.

§ 195. Every waste-weir upon the same level as either of the canals, shall be constructed, as nearly as may be consistent with the safety and convenience of the canals, of the same height, but in all cases so, as to leave a depth of at least four feet water in the level; and there also shall be constructed one waste-gate, as nearly opposite to the mouth of every feeder taken into the canal, as the convenient discharge of the water will permit.

TITLE X.**OF THE SALT SPRINGS.**

[Ch. 346 of Laws of 1850 repeals the whole of this Title and all acts amending it, and substitutes an entire new enactment, which is not made a part of the Revised Statutes, and is therefore not inserted here.]

TITLE XI.**OF THE INTEREST OF THE STATE IN MINES.**

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- SEC. 1. What mines belong to the state in right of sovereignty
2. Other mines belonging to the state.
3. What mines belong to the owner of the soil.
4. Discoverers of gold and silver mines, to have benefit thereof for twenty-one years.
5. Notice to be given to the secretary of state by such discoverer.

SEC. 6. Such discoverer to be preferred in contracts for the working of the mines.

7. Limitation of the provisions of this Title.

§ 1. The following mines are, and shall be, the property of the people of this state, in their right of sovereignty:

Interest
of state as
sovereign.

1. All mines of gold and silver discovered, or hereafter to be discovered, within this state.

2. All mines of other metals discovered, or hereafter to be discovered, upon any lands owned by persons not being citizens of any of the United States.

3. All mines of other metals discovered, or hereafter to be discovered, upon lands owned by a citizen of any of the United States, the ore of which, upon an average, shall contain less than two equal third parts, in value, of copper, tin, iron and lead, or any of those metals.

1 R. L., 124, § 1 & 5; 293, § 5.

§ 2. All mines, and all minerals and fossils discovered, or hereafter to be discovered, upon any lands belonging to the people of this state, are and shall be the property of the people, subject to the provisions hereinafter made to encourage the discovery thereof.

As owner.

Laws of 1827, 239, § 4.

§ 3. All mines of whatever description, other than mines of gold and silver, discovered or hereafter to be discovered, upon any lands owned by a citizen of any of the United States, the ore of which, upon an average, shall contain two equal third parts or more, in value, of copper, tin, iron and lead, or any of those metals, shall belong to the owner of such land.

Private
property.

1 R. L., 125, § 5.

§ 4. Every person who shall make a discovery of any mine of gold or silver, within this state, and the executors, administrators or assigns of such person, shall be exempted from paying to the people of this state, any part of the ore, produce or profit of such mine, for the term of twenty-one years, to be computed from the time of giving notice of such discovery, in the manner herein after directed.

Bounty to
discoverers.

1 R. L., 125, § 1.

§ 5. No person discovering a mine of gold or silver within this state, shall work the same, until he give notice thereof, by information in writing, to the secretary of this state, describing particularly therein, the nature and situation of the mine. Such notice shall be registered in a book, to be kept by the secretary for that purpose.

Notice to be
given.

1 R. L., 125, § 2.

§ 6. After the expiration of the term above specified, the discoverer of the mine, or his representatives, shall be preferred, in any contract, for the working of such mine, made with the legislature, or under its authority.

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Privilege of
discoverers.

1 R. L., 125, § 3 & 4.

§ 7. Nothing contained in this Title shall affect any grants

Qualifica-
tions.

TITLE 12.

heretofore made by the legislature, to persons having discovered mines; nor be construed to give any person a right to enter on, or break up, the lands of any other person, or of the people of this state, or to work any mine in such lands, unless the consent, in writing, of the owner thereof, or of the commissioners of the land-office, when the lands belong to the people of this state, shall be previously obtained.

1 R. L., 125, § 4.

TITLE XII.**OF ESCHEATS.**

- SEC.** 1. Attorney-general to bring ejectment for the recovery of escheated lands.
 2. Notice of such suits, how published.
 3. Contents of such notice.
 4. Judgment in ejectment how far conclusive.
 5. Special provisions as to place of trial.
 6. When part of a lot is escheated residue may be sold.
 7. Effect of grants in such cases.
 8. Residue to be appraised, &c.
 9. Attorney-general to report recoveries to the commissioners of the land-office.

Ejectment
to be
brought.

§ 1. Whenever the attorney-general shall be informed, or have reason to suspect, that the people of this state have title to any real estate by escheat, he shall cause an action of ejectment to be brought for the recovery thereof; in which action, the proceedings shall, in all respects, be similar to those usually had in other actions of ejectment, except that where the premises for which the action is brought are not occupied by any person, and no person shall be known as claiming title thereto, the supreme court on affidavit of such facts may allow the suit to be brought as against claimants unknown, and the declaration and notice shall be served by publishing the same in such manner and for such time as the court shall direct: and if no person shall appear in said action, the default of the claimants unknown shall be entered, and judgment be rendered thereon.

Laws of 1818, 293, § 2; 1820, 248, § 5; 1830, ch. 320, § 63; 8 B., 195.

Notice to be
published.

§ 2. No such action shall be brought to trial, when the lands are occupied, nor shall judgment be taken therein, when such lands are vacant, until three months' notice shall have been published, by order of the commissioners of the land-office, in the state paper, and also in one public newspaper printed in the city of New-York, and in one paper printed in the county where the lands shall be situated, or in an adjoining county when there is no paper printed in the county.

Laws of 1818, 293, § 2; 1820, 248, § 5.

Contents.

§ 3. Such notice shall state the proceedings which have been had, for the recovery of the said lands, and give a description of the same.

Laws of 1818, 293, § 2; 1820, 248, § 5.

Claimants:
unknown.

§ 4. After any lands recovered in any action against claimants unknown shall have been sold and conveyed under the

direction of the commissioners of the land-office, the judgment recovered in such action shall be conclusive upon the title of such lands, and shall bar all persons claiming or to claim the same or any part thereof, except such claimants shall, within five years after the docketing of such judgment, commence their action for the recovery of such lands, subject to the like exceptions in favor of persons within age, insane, or imprisoned, and of married women, as are contained in the statutes of this state regulating the time of commencing actions relating to real property.

Laws of 1830, ch. 320, § 64.

§ 5. Any such action of ejectment, which has been, or may hereafter be commenced, to recover any lands situated in the military tract, in the several counties of Cortland, Tompkins, Seneca and Oswego, may be tried in either of the counties of Onondaga or Cayuga, whenever the attorney-general, and the attorney for any defendant, shall agree thereto, in writing, which agreement shall be filed in the office of one of the clerks of the supreme court; and every trial of any such action, pursuant to such agreement, shall have the like effect and validity as if such trial were had in the county where such lands are situated.

Suit, when tried in certain cases.

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Laws of 1820, 242, § 8.

§ 6. In all cases where proceedings have been or shall hereafter be had, whereby any part of any lot on the tract set apart for military bounty lands, have been or shall be, by judgment of law, escheated to the people of this state, on account of the death of the original patentee, without heirs, and before a conveyance by such patentee, or for any other cause, which shall in like manner extend to the title of the whole of such lot, the whole and every part of such lot included in the original patent of the same, and which, at the time of such escheat, was not in the actual possession of any person or persons under colour of title, may be sold by the commissioners of the land-office, and granted in the manner provided by law for the sale of the unappropriated lands belonging to this state.

Effect of escheat of part of a lot.

Laws of 1828, 422, 430.

§ 7. Any such grant shall be presumptive evidence of the title of the people of this state, and of the grantee therein named, but may be rebutted by proof that the premises contained in such grant had not in fact escheated to this state.

Grants thereof.

Laws of 1828, 422, 430.

§ 8. Whenever such proceedings shall have been had, as are mentioned in the fifth section of this Title, and a part of a military lot shall have been escheated to the people of this state, for any reason which extends to the title of the whole lot, the commissioners of the land-office may cause the value of the remaining parts of said lot to be appraised as provided in the "Act for the relief of the occupants of military lands

Occupants.

TITLE 12.

which have escheated to the people of this state," passed April 13th, 1819, and the acts amending the same, notwithstanding the necessary proceedings may not have been had to perfect the title of the people to the same; and the occupants of such parts shall thereupon be entitled to all the privileges and benefits conferred by the said act, and the several acts amending the same.

Laws of 1828, 429, 430.

Report.

§ 9. The attorney-general shall, from time to time, make report to the commissioners of the land-office, of all escheated lands recovered by him, in any action of ejectment brought under this Title.

See Laws of 1830, ch. 320; 1831, ch. 116; 1845, ch. 116.

TITLE XIII.**OF THE RECOVERY OF FORFEITED ESTATES.**

SEC. 1. Real estate forfeited for treason, how recovered.

2. Personal estate so forfeited, how recovered.

3. Writ of enquiry to be issued to the sheriff.

4. Proceedings on such writ and effect thereof.

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Real estate.

§ 1. Real estates forfeited to the people of this state, upon any conviction or outlawry for treason, may be recovered in the same manner as escheated lands; and for that purpose, all the provisions of the preceding Title, except those contained in the fourth, fifth, sixth and seventh sections, shall be construed to extend to the recovery of estates so forfeited.

1 R. L., 382, § 6.

Personal.

§ 2. Whenever any personal estate shall be forfeited to the people of this state, upon any such conviction or outlawry, the attorney-general may sue for and recover the same; and the amount thereof, when recovered, shall be paid into the treasury.

1 R. L., 382, § 6.

Writ of
inquiry.

§ 3. Whenever he shall deem it necessary, the attorney-general may cause a writ to be issued out of the supreme court, to the sheriff of any county, to inquire what goods and chattels, any person convicted or outlawed for treason, had at the time of such conviction or outlawry, and to seize and safely keep the same, and return the inquisition into the supreme court, where any person aggrieved thereby, may traverse the same.

1 R. L., 382, § 6.

Proceed-
ings there-
on.

§ 4. If judgment shall be given upon such traverse for the people of this state, or if such inquisition shall not be traversed before the end of the term in which it shall be returned, then a writ shall be issued out of the supreme court to the sheriff, commanding him to sell such goods and chattels, and to bring the monies arising from the sale thereof into court, for the use of the people of this state.

1 R. L., 382, § 6.

CHAP. X.**Of the Militia, and the Public Defence.**

(Took effect January 1, 1838.)

- TITLE 1.** — Of the persons subject to military duty.
- TITLE 2.** — Of the election and appointment of militia officers, and the tenure of their offices.
- TITLE 3.** — Of the enrolment of persons subject to military duty.
- TITLE 4.** — Of the organization, uniform and discipline of the militia.
- TITLE 5.** — Of the several parades and rendezvous of the militia.
- TITLE 6.** — Of courts of enquiry, and courts-martial.
- TITLE 7.** — Of penalties, fines, fees and expenditures.
- TITLE 8.** — Of the duties of certain staff officers, and of various matters connected with their respective departments.
- TITLE 9.** — Miscellaneous provisions of a general nature.
- TITLE 10.** — Special provisions.

[This chapter is inserted because it has never been, in terms, repealed; but several acts have been passed, apparently covering the whole ground and repealing all laws "inconsistent with" them. See Laws of 1854, ch. 398; 1855, ch. 261 and ch. 538; 1858, ch. 139 and ch. 343; 1863, ch. 477.]

TITLE I.

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OF THE PERSONS SUBJECT TO MILITARY DUTY.

- SEC. 1.** Persons subject to military duty.
2. Civil officers and others, exempt from military duty.
3. Non-commissioned officers and privates of uniform companies, when to be exempt.
4. Provision for removal from one company to another.
5. Mariners and firemen exempt.
6. Manufacturers and students, when exempt.
7. Persons having scruples of conscience may commute.

§ 1. All able bodied free white male citizens between the ages of eighteen and forty-five years, resident in this state, and not exempted from serving in the militia by the laws of the United States, or of this state, are subject to military duty within this state.

Persons
liable to
duty.

§ 2. In addition to the persons exempted by the laws of the United States, the following persons shall be exempt from military duty:

Officers,
&c., exempt

1. The lieutenant-governor;
2. The members of the legislature, during the term for which they were elected, and the officers thereof during its meeting, and for fourteen days before and after each meeting;
3. The secretary of state, attorney-general, comptroller, treasurer and surveyor-general, and the deputies and clerks in their respective offices;
4. The chancellor, register and assistant register of the court of chancery, judges and clerks of the supreme court, circuit judges, judges and clerks of county courts, surrogates, judges of mayor's courts, and sheriffs;
5. Ministers and preachers of the gospel, teachers in all colleges, and teachers actually employed in academies and common schools;

TITLE I.

6. Officers in the army of the United States;

7. Officers hereafter to be commissioned who shall serve as such in the militia of this state, or in that of any one of the United States, for the space of four years; but no such officer who may have served in the militia of this state, shall be so exempt, unless by his resignation, after such term of service, duly accepted, or in some other lawful manner, he shall have been honorably discharged from his commission.

Laws of 1835, chap. 304.

Non-com-
missioned
officers, &c.,
exempt.

§ 3. Every non-commissioned officer, musician and private of every uniform company or troop, raised, or hereafter to be raised, who has heretofore uniformed himself, or shall hereafter uniform and equip himself, and whose term of service in such company or troop, shall have amounted, or shall amount, to fifteen years from the time of his enrolment therein, shall be exempt from military duty, except in cases of insurrection or invasion.

[1836]
Id.

§ 4. If any member of such company or troop, who shall have been regularly uniformed and equipped, shall, upon his removal out of the beat of such company or troop, or upon the disbandment thereof, enlist into any other uniform company or troop, and uniform and equip himself therefor, and serve in the same; whenever the whole time of his service in such companies or troops, computed together, shall amount to fifteen years, he shall be exempt from military duty, in like manner as if he had served for the whole period, in the company or troop in which he was first enrolled.

Laws of 1825, 412, § 4 & 7; 1835, chap. 304.

Mariners
and firemen

§ 5. Every person actually employed by the year or season, on board any vessel, or in the merchant service or coasting trade, in this state; all firemen attached to supply engines; and all other firemen, belonging to any company, in any city or village in this state, not exceeding twenty-four in number, attached to a fire engine; unless in cases otherwise specially provided, shall be exempt from military duty, except in cases of war, insurrection or invasion.

Laws of 1825, 412, § 4 & 7; 1835, chap. 304.

Manufac-
turers and
students.

§ 6. Every person actually employed by the year, month or season, in any blooming-furnace, or glass factory, shall be exempt from military duty, except in cases of insurrection or invasion.

Laws of 1824, 307, § 1; 1835, chap. 304.

Who may
commute.

§ 7. Every inhabitant of this state of any religious denomination, otherwise subject to military duty, but who, from scruples of conscience, shall be averse to bearing arms, and shall refuse personal military service, shall be exempt therefrom, on paying annually the sum of four dollars for such exemption.

Laws of 1824, 332, § 6.

TITLE II.

TITLE 2.

OF THE ELECTION AND APPOINTMENT OF MILITIA OFFICERS,
AND THE TENURE OF THEIR OFFICES.

- Sec.** 1. What officers appointed by governor and senate; adjutant-general by governor.
 2. Certificate of appointment and commission.
 3. Commander-in-chief to appoint his own aids and military secretary.
 4. Commissary-general appointed by legislature for three years; how removed.
 5. Copies of resolution appointing commissary-general, to whom to be sent.
 6. Commissary-general to take oath. Resignation.
 7. Field, line, and non-commissioned officers, how chosen.
 8. Staff officers, how appointed.
 9. Commissioned officers are to be commissioned by governor; how removed.
 10. Serjeant-majors, &c., appointed by commanding officer of regiment, &c.
 11 & 12. How vacancy in office of brigadier-general filled.
 13. Vacancy in office of field officer, how filled.
 14. Vacancy in office of captain or subaltern in any company, how filled.
 15. Notices for an election, how served.
 16. Officer issuing notice, to direct some person to serve it; return to be made.
 17. Authentication of return.
 18. Officer causing notice to be given, to preside at election.
 19. If he do not attend, who to preside.
 20. Presiding officer to give notice to persons elected; person to accept in ten days, or considered as declining.
 21. After person elected signifies his acceptance, presiding officer to communicate his name to commanding officer.
 22. When an officer in commission is elected to fill a vacancy, meeting to supply place of officer promoted.
 23. Commanding officers of brigades to transmit names of persons elected, to commander in chief.
 24. Persons aggrieved at an election, may appeal.
 25. Officer appealed to, may order a new election.
 26. Appeal lies from commandant of brigade, to commander-in-chief.
 27. Commander-in-chief may make rules and regulations.
 28. Commissioned officers to take oath.
 29. Before whom oath taken.
 30. Certificate of oath to be endorsed on commission.
 31. No fee allowed for such oath.
 32. A company may at any meeting elect non-commissioned officers.
 33. Commandant of company to conduct election; to certify persons elected to commandant of regiment.
 34. He is to decide upon legality of election, and issue warrants.
 35. Commandants of companies may call special meetings, for election of non-commissioned officers.
 36. When a majority required, and when a plurality sufficient.
 37, 38 & 39. Resignations, and the acceptances thereof.
 40. On accepting a resignation, commander-in-chief to cause notice of an election.
 41. When removal from bounds of command vacates office.
 42. Qualification of voters.
 43. Challenging voters.
 44. Oath to be administered.
 45. Notice that commission is ready, to be given.

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§ 1. All major-generals, brigade-inspectors, and chiefs of the staff departments, except the adjutant-general and the commissary-general, are nominated by the governor, and appointed by him with the consent of the senate; the adjutant-general is appointed by the governor.

Officers appointed.

TITLE I.
Commissions.

§ 2. The resolution of the senate, concurring in any nomination made by the governor to a military office, shall be certified by the president and clerk of the senate, and be transmitted to the adjutant-general, who shall issue the commissions, and record the same in books to be provided by him.

Aids, &c.

§ 3. The commander-in-chief shall appoint his own aids and military secretary.

Commissary-general.

§ 4. The commissary-general is appointed by the legislature in the same manner in which the state officers are directed to be appointed in the third Title of the fifth Chapter of this act. He holds his office for three years, unless sooner removed by concurrent resolution.

Id.

§ 5. A copy of the concurrent resolution of the senate and assembly, appointing the commissary-general, attested by the presiding officers and clerks of the respective houses, shall be immediately transmitted to the governor, and a duplicate thereof, attested in the same manner, to the adjutant-general.

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Id.

§ 6. The commissary-general shall not enter on the duties of his office, until he shall have taken the oath of office prescribed in the constitution. Such oath shall be taken before any officer authorised to administer the same oath to the attorney-general, within the same period, and subject to same regulations. The resignation of the commissary-general shall be tendered to the legislature, and be filed in the office of the secretary of state.

Officers elected.

§ 7. Captains, subalters and non-commissioned officers, are chosen by the written votes of their respective companies; field officers of regiments and separate battalions, by the written votes of the commissioned officers of their respective regiments and separate battalions; and brigadier-generals by the field officers of their respective brigades.

Staff officers.

§ 8. Major-generals, brigadier-generals and commanding officers of regiments or separate battalions, appoint the staff officers of their respective divisions, brigades, regiments or separate battalions.

Commissioned officers.

§ 9. The commissioned officers of the militia are commissioned by the governor; and no commissioned officer can be removed from office, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended; or by the decision of a court-martial pursuant to law.

Warrant officers.

§ 10. Sergeant-majors, quarter-master-sergeants, sergeant standard-bearers, drum-majors, fife-majors, and trumpet-majors, shall be appointed by the commanding officer of the regiment or separate battalion to which they shall belong, by warrant under the hand of such commanding officer, and shall hold their offices during his pleasure.

Laws of 1835, ch. 304.

Vacancy in office of brigadier.

§ 11. Whenever the office of a brigadier-general is vacant, the commander-in-chief shall issue an order for an election to

fill the vacancy; and shall designate a major-general, or some other proper officer, to preside at such election.

§ 12. The officer so designated, shall cause a written or printed notice to be served on each of the field officers of the brigade in which the vacancy exists, at least ten days previous to the election, specifying the time and place of holding such election.

Notice of election.

§ 13. Whenever the office of any field officer in any regiment or separate battalion, is vacant, the commanding officer of the brigade to which such regiment or separate battalion belongs, shall cause a written or printed notice to be served on each commissioned officer in such regiment or battalion, of an election to fill the vacancy. The notice shall specify the time and place of holding the election, and be served at least five days before such election shall take place.

Vacancy, field officer.

§ 14. Whenever the office of captain or subaltern in any company or troop is vacant, the commanding officer of the regiment or separate battalion to which such company or troop belongs, shall cause a written or printed notice of an election to fill the vacancy, to be served on the members of such company or troop, at least three days before the election shall take place; and shall specify in such notice, the time and place of the election.

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Vacancy, captain or subaltern.

§ 15. All notices for any election shall be served on the persons entitled to vote thereat, in the same manner as non-commissioned officers, musicians and privates, are warned to attend a parade.

Service of notice.

§ 16. The officer issuing the notice, shall designate some proper person or persons to serve the same, or to direct such service; and the person so designated, shall make a return of the persons notified, and of the manner of the service.

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§ 17. The return, if made by a commissioned officer, shall be authenticated by his certificate on honor; if by a non-commissioned officer, by the oath of the person making such service. The oath may be administered by any magistrate, or by the officer issuing the notice.

Return.

§ 18. The officer causing the notices to be given for any of the aforesaid elections, shall attend at the time and place of holding such election; he shall organize the meeting, and preside thereat, and may, for sufficient cause, adjourn the same from time to time.

Elections of officers, how conducted.

§ 19. If the officer causing the notices to be given, shall not attend the meeting for the election, then the officer of highest rank present, or in case of an equality of rank between two or more, then such of them as a majority of the electors present shall choose, shall preside at such meeting, and the officer issuing such notices shall cause the proper evidence of service of such notices on all the electors to be delivered to such presiding officer, and at meetings for the election of company officers, the company roll, carefully revised, shall in like manner be delivered with such evidence, and if it shall

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TITLE 2.

happen at any election for commissioned officers, that legal notice has not been given to all the persons entitled to vote thereat, the presiding officer shall adjourn the meeting, and cause such notice to be given. The presence of a person entitled to vote at any election shall be deemed a waiver of his right to take exception to the want of legal notice.

Laws of 1835, ch. 304.

Notice to
be given to
persons
elected.

§ 20. The presiding officer at any election for commissioned officers shall keep the polls open at least one hour after the time appointed for holding the same. He shall then publicly canvass the votes received from the electors for the officers to be elected, and shall forthwith declare the result, and give notice to every person elected of his election. If such person shall not within ten days after being notified of his election, signify to such officer, his acceptance, he shall be considered as declining the office to which he shall have been chosen, and an election shall be held for a new choice.

Laws of 1835, ch. 304.

Elections
of officers,
how con-
ducted.

§ 21. Immediately after the person elected shall have signified his acceptance, the officer who shall have presided at the election, shall, in case of the election of a brigadier-general, communicate the same to the commander-in-chief; and in all other cases, if not himself the commanding officer of the brigade, shall certify to such commanding officer, the names of the persons duly elected.

1b.

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§ 22. If, at any election, an officer, then in commission, shall be elected to fill a vacancy, and shall not decline, the electors present, whether such officer be present or absent, shall proceed to elect a person to fill the place of the officer so promoted, if the officers or persons assembled at such meeting have authority to make the choice.

Notice
to com-
mander-in-
chief.

§ 23. The commanding officers of brigades, shall transmit the names of all persons duly elected or appointed to offices in their respective brigades, and accepting the same, to the commander-in-chief, to the end that commissions may be issued to them.

Appeal.

§ 24. Every person thinking himself aggrieved by the proceedings at any election for a commissioned officer, may appeal, if the election be for a brigadier-general, to the commander-in-chief, and in other cases, to the commanding officer of the brigade, to which such person belongs.

1b.

§ 25. The officer appealed to, shall have power to administer oaths, and shall hear and determine the appeal; and if, in his opinion, the proceedings at such election are illegal, he shall declare the election void, and shall order an election to be held without delay for a new choice.

1b.

§ 26. Any person concerned, may appeal from the decision of the commanding officer of the brigade, to the commander-in-chief, who shall hear and determine such appeal, and in case it shall be necessary, order a new election.

§ 27. The commander-in-chief may make such rules and regulations, relative to appeals, as he shall deem necessary and proper, to give full effect to the provisions of the constitution, and of this Chapter.

§ 28. Every officer duly commissioned shall within ten days after his commission shall be tendered to him, or within ten days after he shall be personally notified that the same is held in readiness for him by any superior officer, take and subscribe the oath prescribed in the constitution of this state; and in case of neglect or refusal to take such oath within the time mentioned he shall be deemed to have resigned said office, and a new election shall be forthwith ordered to fill his place. The neglect or refusal of an officer elect to take such oath shall be no excuse for neglect of duty until another shall be duly commissioned in his place.

TITLE 2
Rules as to
elections
and appeals

Oath of
office.

Laws of 1835, ch. 304.

§ 29. Every commissioned officer shall take and subscribe such oath, before a judge of some court of record in this state, county clerk, commissioner to take affidavits, or some general or field officer who has previously taken it himself, and who is hereby authorised to administer the same.

§ 30. A certificate of the oath shall be endorsed, by the officer administering the same, on the commission.

§ 31. No fee shall be received for administering any such oath, or endorsing such certificate.

§ 32. Any company or troop, may, at any meeting thereof, elect non-commissioned officers to fill any vacancy therein.

Other
elections.

§ 33. Such election shall be directed and conducted by the commanding officer of such company or troop, for the time being, who shall certify the names of the persons elected, to the commanding officer of the regiment or separate battalion, to which the company or troop belongs.

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§ 34. Such commanding officer shall decide upon the legality of the election, and issue warrants to the persons duly elected.

§ 35. The commandants of companies or troops may, whenever they deem it necessary, call a special meeting of their respective companies or troops, for an election of non-commissioned officers.

§ 36. A majority of the votes of all the persons present, at an election of brigadier-general, shall be necessary to a choice; in all other cases, a plurality shall be sufficient.

Majority
and plural-
ity.

§ 37. The commanding officers of brigades, may accept the resignations of all commissioned officers in their respective brigades; but no resignation of any captain, or subaltern shall be accepted, until the same shall have been approved of by the commanding officer of the regiment, to which the officer so resigning may belong. No officer shall be permitted to resign his commission who shall be under arrest, or shall be returned to a court martial for any deficiency or delin-

Resigna-
tions.

TITLE 2.

quency, and no commanding officer of a brigade, regiment or separate bataillion, shall approve or accept any resignation unless the officer tendering the resignation shall furnish satisfactory evidence that he has delivered all monies in his hands as such officer, and all books and other property of the state in his possession to his next superior or inferior officer, or to the officer authorized by law to receive the same.

Laws of 1835, ch. 304.

Resignations.

§ 38. The commanding officer of a brigade on accepting any resignation, shall forthwith communicate the same to the commandant of the regiment to which the officer resigning may belong; and if any such officer be a subaltern, he shall also communicate the same to the commandant of his company.

Id.

§ 39. The commander-in-chief may accept the resignation of any officer, whose resignation the commanding officer of a brigade is not authorised to accept; and he may also accept the resignation of any officer, whose resignation the commanding officer of his brigade, shall have refused to accept.

Id.

§ 40. On accepting the resignation of any officer, the commander-in-chief shall cause the necessary notices and orders to be given, for an election to fill the vacancy so created.

Removal from bounds of command.

§ 41. Every officer who shall remove out of the bounds of his command, (unless such command shall be in any of the cities of this state); and every officer who shall be absent from his command twelve months, without leave of the commanding officer of his brigade, shall be considered as having vacated his office; and a new election shall be held without delay, to fill the vacancy so created.

Laws of 1824, 431, § 1.

Qualification of members.

§ 42. No person shall be allowed to vote at any election for a commissioned or non-commissioned officer of a company, unless he is an actual resident in the bounds of such company where he shall offer to vote, and actually liable to do militia duty.

Laws of 1835, ch. 304.

Challenge.

§ 43. If any person offering to vote at any election for a commissioned officer of a company, shall be challenged as unqualified by any person entitled to vote thereat, the presiding officer shall declare to the person so challenged the qualifications of an elector.

Laws of 1835, ch. 304.

Oath to voter.

§ 44. If he shall state himself to be duly qualified, and the challenge shall not be withdrawn, the presiding officer shall then tender him the following oath—"You do swear (or affirm) that you are an actual resident in the bounds of the company commanded by ———, and that you are liable to do military duty."

Laws of 1835, ch. 304.

§ 45. The commissioned officer who shall receive a commission for any subordinate officer, shall, within thirty days thereafter, give notice thereof in writing by mail or otherwise to the person entitled to it.

Laws of 1835, ch. 304.

TITLE 2.
Officers receiving commissions.

TITLE III.

OF THE ENROLMENT OF PERSONS SUBJECT TO MILITARY DUTY.

Sec. 1. Commandants of companies to enrol persons subject to duty.

2. Notice to such persons to attend training, a legal notice of enrolment.

3. Persons enrolled to be provided with arms, &c.

4. Age and ability to bear arms, determined; appeal.

5. Persons claiming exemption, to produce certificate of surgeon.

6. Tavern-keepers, &c., to give account of their boarders.

7. Penalty for not giving account, or for giving a false one.

8. Commandants of companies may enrol musicians.

9. Privileges and liabilities of persons so enrolled.

10. After such enrolment, musician not to enlist in any other company.

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§ 1. The commanding officer of each company of infantry shall, from time to time, enrol all persons within the limits of his company, who may be subject to military duty; and shall without delay, notify such persons of their enrolment.

Enrolment.

§ 2. Every notice or warning to a person so enrolled, to attend a company, battalion, or regimental muster or training, pursuant to the provisions of this Chapter, shall be deemed a legal notice of his enrolment.

§ 3. Every person duly enrolled, shall be provided, within six months from and after he shall be duly notified of his enrolment, with arms, accoutrements and ammunition, agreeably to the directions of the laws of the United States.

Duty of persons enrolled.

§ 4. The age and ability to bear arms, of every person so enrolled, shall be determined by the commandant of such company, subject to an appeal to the commanding officer of the regiment; but the decision of neither of these officers, shall prevent a court-martial from determining, whether such person was properly enrolled.

Age and ability.

§ 5. Persons claiming to be exempted from enrolment, by reason of inability to bear arms, may produce the certificate of a surgeon, or surgeon's mate, as evidence of such inability; but such certificate shall not be conclusive, nor shall it be lawful for the person giving the same, to take any fee or reward therefor.

Surgeon's certificate.

§ 6. All tavern-keepers, keepers of boarding houses, persons having boarders in their families, and house-keepers, upon their being thereto requested by the commanding officer of the company within the beat of which they reside, shall give to such commanding officer, a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty, may be enrolled according to law.

Duty of tavern keepers, &c.

§ 7. If any person of whom such account is so demanded, n.

TITLE 4.

shall refuse to give such account and names, or shall wilfully give a false account, he shall forfeit and pay ten dollars for every individual name that may be refused, omitted, concealed or falsely stated, to be recovered by the commanding officer of the regiment, for the use of his regiment.

Laws of 1835, ch. 304.

Musicians.

§ 8. Every commandant of a company, may enrol as musicians in his company, at least two, and not more than five persons residing in his beat, who are desirous to be so enrolled.

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1b.

§ 9. The persons so enrolled, shall perform the duty of musicians in such company, instead of serving as privates therein, and shall respectively be entitled to the same privileges and exemptions, as non-commissioned officers and privates, in uniform companies, and shall be subject to the same fines and penalties, for the non-performance of their duty, as non-commissioned officers are liable to, for absence from a parade.

1b.

§ 10. No such musician after being enrolled, shall enlist into any other company, without the written consent of the commanding officer of the company, to which he belongs.

TITLE IV.

OF THE ORGANIZATION, UNIFORM AND DISCIPLINE OF THE MILITIA.

ART. 1. — Of the general organization of the militia, and their uniform and discipline.

ART. 2. — Of the organization of the staff departments.

ART. 3. — Of the organization of bands of musicians.

ARTICLE FIRST.

OF THE GENERAL ORGANIZATION OF THE MILITIA, AND THEIR UNIFORM AND DISCIPLINE.

SEC. 1. Militia organized according to laws of United States.

2. Subject to such laws, commander-in-chief may arrange militia.

3. He may transform cavalry to light artillery.

4. Commandants of brigades may alter regiments, &c., under their command.

5. Such alterations to be reported to commander-in-chief.

6. Officers rendered supernumeraries by such alterations, not to lose their rank in line.

7. Supernumeraries to equip and attend parades, &c.

8. With the consent of commandant of brigade, troops of cavalry, &c., may be formed.

9. Before such consent, he shall be satisfied that they intend to serve.

10. Every troop, &c., that has not 40 privates, to be reported to commandant of brigade.

11. If 40 do not appear, proof to be required that that number belong to company, &c.

12 & 13. When such company is to be disbanded.

14. Riflemen not formed into battalions or regiments, considered part of infantry.

15. Regiments of riflemen, &c., not formed into brigades, considered part of infantry.

16. No one to leave uniform company without consent of commandant.

17. Commandants of uniform company to make return of the persons enlisted.

18. Contents and effect of return.

19. Whenever one is discharged from an uniform company, notice to be given.

Sec. 10. Last three sections not to extend to New-York.

21. Persons under 21 years of age, not to join any uniform company, without consent, &c.

22. Uniform of the infantry.

23. Discipline to conform as near as may be to that of United States army.

24. Commander-in-chief to direct the guide for artillery.

§ 1. The organization of the militia, in divisions, brigades, regiments, battalions, squadrons, troops, and companies, shall be conformed to the provisions of the laws of the United States. [304]
General or-
ganization.

§ 2. Subject to such laws, the commander-in-chief may ^{th.} arrange, alter, divide, annex and consolidate the divisions, brigades, regiments, battalions, squadrons, troops and companies, in such manner as, in his opinion, the proper organization of the same shall require.

§ 3. The commander-in-chief may transform any part of ^{th.} the cavalry to light artillery, and when so transformed, they shall arm and equip as cavalry, and be liable to do duty as such, or as light artillery, as the commander-in-chief shall, from time to time, direct.

§ 4. The commanding officer of each brigade, with the approbation of the commanding officer of his division, may divide, annex, or alter the bounds of, the several regiments, or separate battalions under his command; and in all cases of alterations in the bounds of any regiment, that part containing the major part of the companies of any one regiment, shall retain its name, number and rank. The commanding officer of each squadron, regiment or separate battalion, with the approbation of the commanding officer of his brigade, may divide, annex or alter, the bounds of the several troops and companies under his command. Powers of
brigadier.

§ 5. All such alterations shall be forthwith reported to the ^{th.} commander-in-chief, and remain in force until he shall otherwise direct.

Laws of 1835, chap. 304.

§ 6. Every officer rendered supernumerary by any consolidation or alteration of regiments, separate battalions, squadrons, troops, or companies, shall be deemed to have resigned his commission, unless he shall give written notice of his intention to retain his rank in the line, to the commanding officer of the brigade to which he belonged, within thirty days after such consolidation or alteration, shall be published in general orders. Superna-
meraries.

§ 7. Supernumerary officers shall equip themselves, and ^{th.} those under the rank of colonel, shall attend the parades and drill trainings of the officers and non-commissioned officers.

§ 8. Whenever forty persons, subject to military duty, shall associate together for the purpose of forming a troop of cavalry, or a company of riflemen, grenadiers, light infantry, artillery, or light artillery, and with the consent of the commanding officer of their brigade, shall apply to the commander-in-chief Troops and
uniform
companies.

TITLE 4.

to be organized as such, the commander-in-chief may so organize them; and such persons as a majority of the applicants shall have designated in their application, shall be commissioned as the officers of such troop or company; but no artillery company shall be organized by the commander-in-chief, unless the commissary-general shall have on hand a proper piece of artillery and its equipage, ready to be delivered to such company.

Troops and
uniform
companies.

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§ 9. Every commanding officer of a brigade, before he shall consent to any such application, shall require satisfactory evidence, that the persons making the same, intend, in good faith, to serve, when organized; and that they are of sufficient ability to equip themselves according to law.

When to be
reported.

§ 10. Every troop of cavalry, and every company of artillery, light artillery, riflemen, light infantry, or grenadiers, which shall not, at any annual inspection and review, have at least forty privates mounted, or armed and equipped, as the law directs, shall be immediately reported by the inspector, or officer acting as such, to the commandant of the brigade to which such troop or company belongs.

Proof
required.

§ 11. If forty privates shall not so appear at such inspection and review, the inspector shall require proof, that there are privates belonging to such company, or troop, properly mounted, or armed and equipped, sufficient to complete the whole number of forty. Such proof may be made by the certificate, on honor, of a commissioned officer, or by the oath of a non-commissioned officer, or private.

When dis-
banded.

§ 12. The commandant of a brigade, to whom a company, or troop, shall be reported as deficient in number, shall thereupon disband the same, in orders, unless he shall have reason to believe that such company, or troop, will have forty privates, present and absent, mounted, or armed and equipped, as aforesaid, at the next succeeding inspection and review.

Id.

§ 13. In case such company, or troop, at the next inspection and review, shall have, absent and present, the number above required, mounted, or armed and equipped, it shall not be disbanded; but if otherwise, the commandant of the brigade shall, without delay, disband the same.

Riflemen.

§ 14. All companies of riflemen, not formed into separate battalions, or regiments, shall, for all the purposes of this Chapter, be considered as a part of the regiments or separate battalions of infantry, in the bounds of which they are situated.

Riflemen,
cavalry, &c.

§ 15. All regiments and separate battalions of riflemen, cavalry, artillery, or light artillery, not formed into brigades, shall, for the purposes of this Chapter, be considered as a part of the brigade of infantry, in the bounds of which the commandants of such regiments, or separate battalions, shall respectively reside.

Prohibition
against
leaving
troop, &c.

§ 16. No non-commissioned officer, musician, or private, belonging to any troop of cavalry, or company of artillery,

light artillery, grenadiers, riflemen, or light infantry, shall leave the troop, or company, to which he belongs, to serve as a fireman, in any fire company now raised, or hereafter to be raised in any city or county; nor shall he leave such troop, or company, and enlist in any other, without the written consent of the commandant of the troop, or company, to which he belongs, unless he shall have removed out of the beat of such troop, or company.

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§ 17. The commandant of every uniform company or troop, shall make a return without delay, of all persons enlisted therein, to the commandants of infantry companies, within whose beats, the persons enlisted respectively reside, and in such return shall specify the date of each enlistment; and the commandants of infantry companies shall strike from their rolls, the name of every person thus certified to have been enlisted, in any regularly organized uniform company or troop.

Return of enlistments

§ 18. Such return or certificate shall include only such persons as shall, at the time of such return, be uniformed and equipped according to law; and every person who is not named in such return, and who shall not be certified by the commandant of the uniform company or troop as the true and rightful owner of his uniforms and equipments, shall be liable to do duty in an infantry company, notwithstanding he may have enlisted in an uniform company or troop.

th.

Laws of 1835, ch. 304.

§ 19. The commandant of every uniform company or troop, whenever he shall discharge an able bodied man, shall give notice thereof, in writing, to the commandant of the infantry company, within whose beat the individual discharged shall reside.

Notice of discharge.

§ 20. The three last preceding sections shall not be construed to extend to the city and county of New-York.

Limitation.

§ 21. No person under the age of twenty-one years, shall hereafter enlist in or join any uniform troop or company, without the consent, in writing, of his parent or guardian, master or mistress.

Infants.

§ 22. The uniform of the infantry, or such portion thereof as the commander-in-chief shall deem advisable, shall in his discretion be directed to conform with that which is now or may hereafter be established by the army regulations of the United States; and of all other corps for which provision is not made by the laws of the United States, as the commander-in-chief shall from time to time direct.

Uniform.

Laws of 1835, ch. 304.

§ 23. The militia of this state, shall, as near as may be, conform their system of discipline and exercise, to that of the army of the United States, as is now or shall hereafter be prescribed by the congress of the United States.

Discipline.

Laws of 1835, ch. 304.

§ 24. The commander-in-chief shall, from time to time, th.

TITLE 4

direct such book as to him shall appear expedient, as a guide for the corps of the militia of this state, and shall furnish the same to the commissioned officers of the militia, at the expense of the state.

Laws of 1839, ch. 361.

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ARTICLE SECOND.

OF THE ORGANIZATION OF THE STAFF DEPARTMENTS.

- SEC. 25. Commander-in-chief entitled to three aids, and military secretary.
 26. Major-general entitled to two, and brigadier-general to one aid.
 27. Adjutant-general has rank of brigadier-general; officers in his department, and their rank.
 28. Officers and their rank in the quartermaster-general's department.
 29. Officers and their rank in the paymaster-general's department.
 30. Commissary-general to have the rank of brigadier-general; military store-keepers in his department.
 31. Officers in the hospital department.
 32. Chaplain to each regiment and separate battalion.
 33. Officers and their rank in judge-advocate-general's department.
 34. Sergeant-majors, &c.
 35. Chief of each staff department, to have command over officers of his department.
 36. Such chief to prepare and transmit all blank forms of returns.

Aids.

§ 25. The commander-in-chief shall be entitled to three aids, with the rank of colonel, and a military secretary, with the rank of major.

Id.

§ 26. Each major-general shall be entitled to two aids, with the rank of major; and each brigadier-general to one aid, with the rank of captain.

Adjutant-general.

§ 27. The adjutant-general shall have the rank of brigadier-general; and in his department there shall be to each division a division inspector, with the rank of colonel; to each brigade a brigade inspector, to serve also as a brigade major, with the rank of major; and to each regiment and separate battalion, an adjutant, with the rank of lieutenant.

Quartermaster-general.

§ 28. In the quartermaster-general's department, there shall be a quartermaster-general, with the rank of brigadier-general; to each division, a division quartermaster, with the rank of lieutenant-colonel; to each brigade, a brigade quartermaster, with the rank of captain; and to each regiment and separate battalion, a quartermaster, with the rank of lieutenant.

Pay-master general.

§ 29. In the paymaster-general's department, there shall be a paymaster-general, with the rank of colonel; to each division, a division paymaster, with the rank of major; to each brigade, a brigade paymaster, with the rank of captain; and to each regiment and separate battalion, a paymaster, with the rank of lieutenant.

Commissary-general.

§ 30. The commissary-general shall have the rank of brigadier-general: and in his department there shall be so many military store-keepers for the safe keeping and the preserving of the state arsenals, magazines, fortifications, and military stores belonging to this state, as he may find it necessary to

appoint, not exceeding one to each arsenal, and one for the fortifications at Fort Richmond, on Staten Island.

§ 31. In the hospital department, there shall be a surgeon-general, with the rank of colonel; to each division, a hospital surgeon, with the rank of lieutenant colonel; to each brigade, a hospital surgeon, with the rank of major; to each regiment, a surgeon, with the rank of captain; and to each regiment and separate battalion, a surgeon's mate, with the rank of lieutenant; but such rank shall not entitle said officers to promotions in the line, nor regulate their pay or rations in service.

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Hospital
department.

§ 32. To each regiment and separate battalion, there shall be appointed one chaplain.

Chaplain.

§ 33. In the judge-advocate's department, there shall be a judge-advocate-general, with the rank of brigadier-general; to each division, a division judge-advocate, with the rank of colonel; and to each brigade, a brigade judge-advocate, with the rank of major.

Judge-advocate.

§ 34. There shall be to each regiment and separate battalion, two sergeant standard bearers, one sergeant-major, one quartermaster-sergeant, one drum-major, and one fife-major; and to each regiment and separate battalion of light artillery and cavalry, one trumpet-major.

Warrant
officers.

Laws of 1835, ch. 304.

§ 35. The chief of each staff department shall, under the direction of the commander-in-chief, have command over all subordinate officers in his department; and shall from time to time issue orders and instructions for their government and practice.

Chief of de-
partments.

§ 36. Each chief of such department shall prepare and transmit, at the expense of this state, all blank forms of returns, precepts, warrants and proceedings necessary in his department.

ARTICLE THIRD.

OF THE ORGANIZATION OF BANDS OF MUSICIANS.

SEC. 37. Commandant of each regiment, &c., may organize a band of musicians.

38. Such musicians subject to their leader, and the commander of regiment, &c.

39. Leader to make return of delinquent members of band.

40. Such return received as evidence.

41. Commanding officer to make return of delinquents in band.

42. He may disband such band.

§ 37. The commanding officer of each regiment or separate battalion, may organize a band of musicians, not exceeding sixteen in number, and by warrant under his hand, may appoint a leader of such band.

Who to
organise
band.

§ 38. Such musicians shall be subject to the orders of such leader, and be under the command of the commanding officer of the regiment or separate battalion; and the whole or any part of said band may be required by such commanding officer, to appear at any meeting of the officers for military

Duty of
bands.

TITLE I.

purposes, and at the review and inspection of such regiment or separate battalion.

[399]
Returns.

§ 39. The leader of each band shall, whenever required by such commanding officer, make returns to him of the warning of the members of his band, and of the delinquents and delinquencies therein; which returns shall be duly authenticated by the oath of such leader, taken before a field officer of such regiment or separate battalion.

1b.

§ 40. Such return, so sworn to, shall be received as evidence in all cases, in the same manner as like returns of non-commissioned officers of infantry companies.

1b.

§ 41. Such commanding officer shall make the like returns of all such delinquents and delinquencies, as in cases of non-commissioned officers and musicians in companies of infantry, and with the like effect; and the courts-martial shall impose the like penalties on such delinquent members of each band.

Band may
be dis-
banded.

§ 42. The commanding officer of such regiment or separate battalion, shall have authority to disband such band, whether now or hereafter established, and to revoke the warrant of its leader.

TITLE V.

OF THE SEVERAL PARADES AND RENDEZVOUS OF THE MILITIA.

- SEC. 1. When and where militia to rendezvous.
2. Uniform companies and troops when to rendezvous.
 3. Commandants of brigades of cavalry, &c., may require their commands to meet.
 4. Commandants of brigades of artillery may dispense with annual review.
 5. They shall give notice thereof to commandants of brigades of infantry.
 6. Commandants of brigades of infantry may, in such case, require such of the artillery as are within their beat, to meet in review.
 7. They shall, on the day of such review, have command of such artillery.
 8. Commandants of brigades of infantry to give notice to commandant of division, of time and place of reviews.
 9. Commandant of division to attend reviews.
 10. Commandants of brigades, with their staff, to attend reviews.
 11. Commissioned, non-commissioned officers and musicians of regiments, to rendezvous two days annually.
 12. On first day, brigade inspector to attend.
 13. Officers of cavalry or artillery may rendezvous a part at one time.
 14. Officers may be required to rendezvous one day in addition to above.
 15. Parades of officers may be by brigades, instead of regiments.
 16. Commandant of regiment to prescribe how officers are to appear at such parades, &c.
 17. He shall report all absences.
 18. Commandants of companies to issue their warrants to warn privates, &c.
 19. Non-commissioned officer to warn persons required by warrant.
 20. He shall make return to his commandant.
 21. Commandant to make return to proper court-martial.
 22. Return of non-commissioned officer, evidence.
 23. Commandants to make return of delinquent non-commissioned officers.
 24. Commissioned officers may warn without warrant.
 25. Tavern-keepers, &c., to give names of boarders.
 26. Penalty for refusing to give account, or for giving a false one.
 27. On parade days, militia under arms from sunrise to sundown.
 28. Commandants to report delinquencies to court-martial.

Sec. 29. Commanding officer may put disorderly persons under guard.

30. Bounds of parade ground to be designated.

31. Liquor and gambling tables may be destroyed.

32. No parades on election days.

33. Commandants of companies to report delinquents on parade days.

34. Commandants of regiments, &c., to report delinquents at officer parades.

35. In case of invasion, militia may be ordered out.

36. Officer ordering, to give notice of invasion to his commanding officer.

37 & 38. Commandants of regiments, to give notice of insurrection.

39. Judge to whom notice given, may require additional forces to quell it.

40. Persons wounded in service of state, provided for at its expense.

41, 42 & 43. How drafts from the militia made, when ordered by president or commander-in-chief.

44. Persons drafted may offer substitutes.

45. Commander-in-chief to prescribe rules relative to distribution of arms, &c., when militia called into service.

46 & 47. Fantastical dresses prohibited.

48. Local description of regiments.

49. Brigade inspector to report.

50. Duty of adjutant-general.

Times of
parade.

§ 1. The militia shall rendezvous as follows :

1. By companies in their respective beats, on the first Monday of September in every year, at nine o'clock in the forenoon, for the purpose of training, disciplining, and improving in martial exercise.

2. By regiments or separate battalions, once in each year, between the first of September and the fifteenth of October, at such time and place in their respective beats, as the commanding officer of the brigade shall direct, for the purpose of inspection, review and martial exercise.

3. At such other times and places, either by regiments, battalions, companies or troops, as the case may require, as shall be directed in any order of the proper authority, calling into the service of the United States or of this state, the whole or any portion of the militia.

4. The infantry company of the fifth ward of the city of Albany may rendezvous for company parade in Washington square in said city.

Laws of 1831, ch. 311.

§ 2. It shall be the duty of all uniform companies and troops, to rendezvous by companies and troops within their respective beats, in addition to the general rendezvous, one day in each year, at such time and place as their respective commandants may direct, and as much oftener as a majority of all the members of the company or troop may direct.

Ib., uni-
form com-
panies.

Laws of 1835, ch. 304.

§ 3. In all cases, where the commanding officers of brigades of cavalry or artillery, shall consider it expedient, they may require the corps under their respective commands to meet by regiments or battalions at any parade, which may be required for the purpose of improvement or inspection.

Cavalry
parades.

§ 4. If the commandant of any brigade of artillery shall deem it impracticable or inconvenient, for any regiment or

Artillery
parade dis-

TITLE A.
passed
with.
It.

battalion under his command, to parade for annual inspection and review, he may dispense with such inspection and review.

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Artillery
when to
parade with
infantry.

§ 5. He shall, in such case, on or before the fifteenth day of July, in each year, notify the commanding officers of the several brigades of infantry, within the beats of which the commanding officer, of any company, belonging to such regiment or battalion, shall reside, that such regiment or battalion will not be ordered to meet for inspection and review.

§ 6. The commandants of brigades of infantry, shall in such cases, require the companies of artillery belonging to such regiment or battalion, to meet for inspection and review, with the regiment or separate battalion of infantry, within whose beat the commanding officers of the respective companies of artillery reside.

Command
on days of
review.

§ 7. The commanding officers of regiments and separate battalions of infantry, shall, on the day of annual inspection and review, have the command of every such company of artillery, and shall give the like previous orders, and make the same returns of delinquents and deficiencies, with the like effect, as if such company belonged to the infantry under their command; but such returns shall be made to the court-martial of the corps to which the company belongs.

Notice of
review.

§ 8. The commandant of each brigade, shall give notice to the commandant of the division, of the times and places of the annual inspection and review, of the several regiments and separate battalions in his brigade.

Command-
ant of di-
vision.

§ 9. Each commandant of division, shall attend the review and inspection, of the several regiments and separate battalions of at least one of the brigades in his division, in each year; and he shall require the officers of the division staff, armed and equipped as the law directs, to accompany him. He shall so attend such reviews and inspections in each brigade of his division, in succession.

Command-
ant of
brigade.

§ 10. The commandant of each brigade shall attend with the officers of the brigade staff, armed and equipped as the laws directs, the annual inspection and review of the several regiments and separate battalions in his brigade.

Officers
parade.

§ 11. The commissioned and non-commissioned officers and musicians of each regiment and separate battalion, shall rendezvous within their respective beats two days successively, between the first day of June and the first day of September in each year, for the purpose of training, disciplining, and improving in martial exercise. The days and places of rendezvous, shall be prescribed by the commanding officer of the brigade.

Duty of
brigade in-
spector.

§ 12. On the first day of such rendezvous, the brigade-inspector shall attend, to superintend the exercise and manœuvres, and to introduce the system of discipline, which is or shall be prescribed by law; and on such day, he shall take the command as drill-officer, so far as shall be necessary to the execution of those duties.

TITLE I.
Officers of
cavalry, &c.
[302]

§ 13. If the commanding officer of any brigade of cavalry or artillery, shall deem it inconvenient for all the commissioned and non-commissioned officers and musicians of any regiment or battalion in such brigade, to rendezvous at the same time and place, he may order them to rendezvous, a part at one time and place, and a part at another; at each of which places, the brigade-inspector of such corps shall, if practicable, attend.

§ 14. The commanding officer of any regiment or separate battalion, in addition to the rendezvous above prescribed, may require the commissioned and non-commissioned officers and musicians, to meet once in each year, for exercise and improvement, at such time and place as he shall appoint.

Additional
 parade of
 officers.

§ 15. The commandant of each brigade, by and with the consent of a majority of the field officers, may require the parades of the officers, non-commissioned officers and musicians, to be held by brigade if he shall deem it expedient, in lieu of the regimental or battalion rendezvous.

May be by
 brigades.

Laws of 1835, ch. 304.

§ 16. The commandant of each regiment or separate battalion, may require the commissioned and non-commissioned officers, at any rendezvous of such officers and musicians, to appear with such arms and accoutrements as he may prescribe; and he may require them to perform every duty, belonging to commissioned and non-commissioned officers, or to privates.

How to
 appear.

§ 17. Such commandant shall report all absences and deficiencies, to the president of the proper court-martial.

Delinquen-
 cies.

§ 18. For the purpose of warning the non-commissioned officers, musicians and privates, to any parade or place of rendezvous required by law, the commandant of each company shall issue his warrant under his hand, to his non-commissioned officers, or to such of them as he may deem proper, requiring them respectively to warn all persons subject to military duty within a certain district, to be designated in such warrant, or all persons named in the warrant, as such commandant may elect, to appear at such parade or place of rendezvous, armed and equipped as the law directs.

Warrant to
 warn for
 parades.

7 J. R., 97.

§ 19. Each non-commissioned officer, to whom such warrant shall be directed, shall warn every person theretofore enrolled or enlisted, whom he shall be therein required to warn, by reading the warrant, or stating the substance thereof, in the hearing of such person; or in case of his absence, by leaving a notice thereof at his usual place of abode, with some person of suitable age and discretion, or affixing the same on the outer door of the house, in case no such person can be found therein. Such notice shall be signed by the non-commissioned officer making the service, and when so left or affixed, shall have the like effect as if the person to whom the same shall be directed, had been personally warned.

How served

TITLE 5.
[303]
 How re-
 turned.

§ 20. Such non-commissioned officer shall deliver the warrant to his commandant, with a return, in which he shall state the names of all persons by him warned, and the manner of warning them respectively, and he shall make oath to the truth of such return: which oath shall be administered by the commandant, and certified by him on the warrant or return.

1b.

§ 21. Such commandant shall deliver the warrant and return, together with his own return of all delinquents and delinquencies, to the president of the proper court-martial.

**Return,
evidence.**

§ 22. The return of such non-commissioned officer, so sworn to and certified, shall be as good evidence on the trial of any person returned as a delinquent, of the facts therein stated, as if such officer had testified to the same before the court-martial, on such trial.

**Return of
officers de-
linquent.**

§ 23. Every commandant of a company shall make the like return, upon honor, and with like effect, of every delinquency and neglect of duty of his non-commissioned officers, either in not attending on parade, or not executing or returning a warrant to them directed, or not obeying the orders of their commanding officers.

**Officers
may warn.**

§ 24. Any commissioned officer of a company may, without a warrant, warn any or all of the persons subject to military duty, within the beat of the company, to appear at any parade or place of rendezvous. Such warning may be given by him, either personally, or by leaving or affixing a notice, in the same manner as if given by a non-commissioned officer; and his certificate, upon honor, shall be received by any court-martial, as legal evidence of such warning.

**Duty of
tavern-
keepers,
&c.**

§ 25. All tavern-keepers, keepers of boarding-houses, persons having boarders in their families, and house-keepers, upon their being thereto requested by the commandant of the company within the beat of which they reside, or by the non-commissioned officer of any such company, having a warrant from such commanding officer, to warn persons to attend any parade, shall give to such commanding officer, or non-commissioned officer, a true account of all persons lodging or boarding with them, and of their names, if known; to the end that such persons as are liable to do military duty, may be warned to rendezvous, according to law.

Penalty.

§ 26. If any person, of whom such account is so demanded, shall refuse to give such account and names, or shall wilfully give a false account, he shall forfeit and pay twenty-five dollars, to be recovered by the commandant of the regiment, for the use of his regiment.

**Time of
parade.**

§ 27. For the purpose of preserving order on the day of parade, the militia shall be considered as under arms from the rising of the sun, to its setting on the same day; and shall be exempted from arrest on civil process, during that time.

**[304]
Powers of
command-
ants.**

§ 28. Every commandant of a company or troop, in addition to putting under guard, as he is hereby authorised to do, and the exercise of the usual military powers with which he is

hereby vested, shall return to the president of the proper court-martial, the names of all persons in the company or troop, who shall have discharged any fire-arms on such day, within two miles of such parade, without the order or permission of a commissioned officer, or officer acting as such; and also the names of every non-commissioned officer, musician or private, who shall, on such day, refuse or neglect to obey the orders of his superior officer, or to perform such military duty or exercise as may be required; or depart from his colors, post, or guard; or leave the ranks, without permission from his superior officer.

§ 29. The commanding officer of division, brigade, regiment or separate battalion, present at any parade, may put under guard, any by-stander, or spectator, who shall abuse, molest, or strike, any one when on parade, or under arms.

Laws of 1835, ch. 304.

§ 30. The commanding officer of regiment or separate battalion, shall, on the day on which any parade or rendezvous is to be held, and previous thereto, cause the bounds of the parade ground to be designated, in such manner as not to obstruct the passage of travellers on any public highway.

Laws of 1835, ch. 304.

§ 31. If any person, during parade, shall encroach on the bounds of the parade ground, previously designated; or shall, then and there, sell, or offer to sell, or give away, any spirituous liquors, without permission of the commanding officer; or shall have in his possession any gambling table, or other gambling device; such person may be put and kept under guard by such commander, until the setting of the sun on the same day; and such liquor, gambling table, or other gambling device, may be abated, or destroyed, as a nuisance, by order of the commandant.

§ 32. No parade or rendezvous of the militia shall be ordered on any day during which a general or special election shall be held, nor within five days previous to such election, except in cases of invasion or insurrection, or of imminent danger thereof; and if any officer shall order any such parade, or rendezvous, he shall forfeit and pay to the people of this state, the sum of five hundred dollars.

§ 33. Every commandant of a company, or troop, within any regiment or separate battalion, shall, within fifteen days after any parade, furnish the president of the proper court-martial, with a return of all persons belonging to his company, or troop, who shall have been, at such parade, delinquent in the performance of duty, or deficient in the equipments, or uniform, required by law, or who by any means, shall have incurred any fine or penalty, under this Chapter.

§ 34. The commandant of every regiment or separate battalion, within ten days after a regimental or battalion parade, or rendezvous of commissioned and non-commissioned officers

Powers of commandant.

Parade ground.

Encroachment and nuisances thereon.

No parade on election day.

Delinquencies to be reported.

TITLE I.

and musicians, shall furnish the president of the proper court-martial, with a return of all delinquents under the rank of major, in the staff or line.

Duty of
officers in
case of
invasion.

§ 35. In case of any invasion, or of imminent danger thereof, within the limits of any division, brigade, regiment, or separate battalion, it shall be the duty of the commandant of such division, brigade, regiment, or separate battalion, to order out, for the defence of the state, the militia, or any part thereof, under his command.

1b.

§ 36. It shall also be his duty, to give immediate notice of such invasion, and of the circumstances attending the same, to his immediate commanding officer, by whom such information shall be transmitted, with the utmost expedition, to the commander-in-chief.

1b.

§ 37. The commandant of every regiment, or separate battalion, within the limits of which an insurrection may happen, shall immediately assemble his regiment, or battalion, under arms, and with the utmost expedition, shall transmit information of such insurrection, to the commandant of his brigade, and to the commander-in-chief.

1b.

§ 38. He shall also give immediate notice of such insurrection, to any judge of the county in which it shall happen, and shall take such measures for its suppression, as to such judge shall appear most proper and effectual.

1b.

§ 39. If the said judge shall deem a greater force requisite to quell the insurrection, he shall require such additional force as he may deem necessary, from the commandant of the division, or of any brigade therein, whose duty it shall be to obey his requisition.

Persons
disabled in
service.

§ 40. Every person who, whilst in the actual service of this state, shall be wounded or disabled in opposing or suppressing any invasion or insurrection, shall be taken care of and provided for, at the expense of the state.

Drafts of
militia.

§ 41. Whenever the president of the United States, or the commander-in-chief, shall order a draft from the militia for public service, such draft shall be made, in each company in which it is required, by lot, to be determined at a company parade ordered for that purpose.

1b.

§ 42. Each non-commissioned officer, musician, and private, present at such parade, shall draw, to make up the quota required, and each person drawn shall fill such grade in the militia drafted, as he was entitled to when drawn, in his own company.

1b.

§ 43. One of the commissioned officers of the company shall draw for every person subject to the draft, who shall refuse to draw or be absent from the parade, and such draft shall have the like effect, as if the person so refusing or absent, had drawn for himself.

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Substitutes
for persons
drafted.

§ 44. Any person so drafted, may offer a substitute, at or after the time of rendezvous of the drafted militia; and such substitute, if he shall be an able-bodied man, of the age of

twenty-one years, and shall consent in writing to subject himself to all the duties, fines, forfeitures, and punishments, to which his principal would have been subject, had he personally served, shall be accepted by the commandant of the company of drafted militia, to which his principal may belong.

§ 45. The commander-in-chief shall prescribe such rules, orders, and regulations, relative to the distribution of arms, ammunition, and military stores, to the militia when called into actual service, as he may deem proper.

Duty of
command-
er-in-chief.

§ 46. The commandants of companies or troops are hereby authorized to put under guard or to commit to prison for the day and to return to the proper court-martial any non-commissioned officer, musician or private, who shall appear on parade wearing any false face, personal disguise or other unusual or ludicrous article of dress, or any arms, weapons or other implements, or things not required by law, and which are calculated to interrupt the peaceable and orderly discharge of duty.

Fantastical
dress, &c.

Laws of 1835, ch. 304.

§ 47. Any commanding officer of division, brigade, regiment, separate battalion, company or troop present at any parade, is hereby authorized to put under guard or to commit to prison for the day any person or persons who shall, upon or near any parade ground, field, public highway, or any other place occupied by the militia under arms, by means of ludicrous disguises, dress, arms and instruments, or by any other means disturb the peaceable and orderly proceedings of those under arms; and the jailor shall receive and confine such person in the debtor's department of the jail, pursuant to the order or commitment, which shall be issued and delivered to him in virtue of this or the preceding section.

Laws of 1835, ch. 304.

§ 48. It shall be the duty of each commandant of a regiment or separate battalion, within twenty days after the annual inspection, to furnish to the commandant of his brigade a local description of such regiment or separate battalion, together with a roster of the commissioned officers of such regiment.

Local de-
scription

Laws of 1835, ch. 304.

§ 49. It shall be the duty of each brigade inspector, within thirty days after the annual review in each year, to transmit to the adjutant-general a statement of the reviews and inspection of the several regiments and separate battalions in his brigade, attended by the commanding officer of division, accompanied by the division staff armed and equipped as the law directs; and also the commanding officer of brigade, with the brigade staff armed and equipped as the law directs.

Statement
of brigade
inspector.

§ 50. In case any general officer or any member of his staff shall neglect to attend such inspection and review, it shall be the duty of the adjutant-general to require such

Duty of
adjutant-
general.

TITLE 6.

officer to render an excuse in writing to the commander-in-chief for his delinquency. If the commander-in-chief shall deem such excuse insufficient, he shall order a court-martial to try the delinquency.

Laws of 1835, ch. 304.

TITLE VI.

OF COURTS OF INQUIRY AND COURTS-MARTIAL.

ART. 1.—Of courts of inquiry and courts-martial for the trial of officers.

ART. 2.—Of regimental and battalion courts-martial.

ART. 3.—General provisions applicable to all courts-martial and courts of inquiry.

ARTICLE FIRST.

OF COURTS OF INQUIRY AND COURTS-MARTIAL FOR THE TRIAL OF OFFICERS.

- SEC. 1. Commander-in-chief, and of division or brigade, may institute courts of inquiry.
2. To consist of not less than three nor more than five commissioned officers.
 3. Courts-martial for the trial of major-generals, ordered by commander-in-chief.
 4. Courts for trial of brigadier-general, ordered by commander-in-chief.
 5. Courts for the trial of all other commissioned officers, by whom ordered.
 6. No officer to be tried, unless a copy of the charges, &c., are delivered to him.
 7. Officer ordering court may supply vacancies therein.
 8. Accused may challenge president of court; challenge how to be determined.
 9. Judge-advocate to administer oath to members of court.
 10. Judge-advocate and members to keep secret sentence of court.
 11. Sentence to be according to offence and military usage.
 12. Proceedings and sentence to be delivered to officer ordering court.
 13. He shall transmit them with his decision, to adjutant-general.
 14. Appeal lies to commander-in-chief.

Courts of
inquiry.

§ 1. Courts of inquiry may be instituted by the commander-in-chief, or the commanding officer of a division or brigade, in relation to those officers for whose trial they are authorised to appoint courts-martial, for the purpose of investigating the conduct of any officer, either by his own solicitation, or on a complaint or charge of improper conduct, degrading to the character of an officer; or for the purpose of settling rank.

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Ib.

§ 2. Such courts shall consist of not less than three, nor more than five, commissioned officers, and the president shall, without delay, report a statement of facts to the officer instituting such court, who may, in his discretion, thereupon appoint a court-martial for the trial of the officer whose conduct shall have been inquired into.

Court-mar-
tial to try
major gen-
eral.

§ 3. Every court-martial for the trial of a major-general, shall be ordered by the commander-in-chief, and shall consist of thirteen officers, any nine of whom shall constitute a quorum.

Ib. to try
brigadier-
general.

§ 4. Every court-martial for the trial of a brigadier-general, shall be ordered by the commander-in-chief, and shall consist of nine officers, any seven of whom shall constitute a quorum.

Court-mar-
tial to try
other off-
cers,

§ 5. All other courts-martial for the trial of commissioned officers, shall consist of seven officers, any five of whom shall constitute a quorum; and shall be ordered, if for the trial of officers above the rank of captain, by the commanding officer

of division, and for all other officers, by the commanding officer of brigade.

§ 6. No officer arrested shall be brought to trial, unless a copy of the charges and specifications, certified by the officer ordering the arrest, shall be delivered to him, or left at his usual place of abode, within three days after his arrest; nor unless the officer ordering such court-martial, shall have ordered the same within thirty days after receiving notice of the arrest and a copy of the charges and specifications; nor until ten days after a copy of a list of the names of the officers detailed to form the court, shall have been delivered to the officer arrested, or left at his usual place of abode.

§ 7. The officer ordering the court, may at any time supply any vacancy, that from any cause, may happen therein.

§ 8. If the officer accused shall have any cause of challenge to the president of such court, he shall within a reasonable time after receiving a copy of the charges, and a list of the members, deliver his cause of challenge in writing, to the officer ordering such court, who shall thereupon determine as to the validity of such challenge; and if in his opinion the causes are sufficient, he shall appoint another president of such court.

§ 9. After the court shall be assembled, and after all challenges, if any are made, shall have been determined, the judge-advocate, whether commissioned or special, shall administer to each member the following oath: "You do swear that you will faithfully discharge the duties of a member of a court-martial now assembled, according to the best of your ability."

§ 10. Every judge-advocate, whether commissioned or special, and every member of a court-martial, shall keep secret the sentence of the court, until the same shall be approved or disapproved, according to law; and shall keep secret the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice.

§ 11. The sentence of any such court-martial shall be according to the nature and degree of the offence, and according to military usage; but shall not extend farther than cashiering the officer convicted, and disqualifying him from holding any office in the militia of this state, and imposing a fine not exceeding one hundred dollars.

§ 12. The proceedings and sentence of every such court-martial, shall without delay, be delivered to the officer ordering the court, who shall approve or disapprove thereof, within fifteen days thereafter, and shall give notice of his approval or disapproval to the president of such court-martial, and to the arresting officer; and he may, at his discretion, publish the sentence, as approved or disapproved, in orders.

§ 13. He shall also transmit such proceedings and sentence, and his approval or disapproval thereof, to the adjutant-general, to be kept in his office.

TITLE 6.
Appeal.

§ 14. The right of appeal to the commander-in-chief as it now exists by military usage, is reserved; but no appeal shall be received, unless made within twenty days after the decision appealed from, is made known to the person appealing.

ARTICLE SECOND.

OF REGIMENTAL AND BATTALION COURTS-MARTIAL.

Sec. 15. Commandants of regiments and separate battalions to appoint courts-martial.

16. They shall fix day on which court shall convene.

17. They are to fill vacancies in court.

18. President and members to take oath.

19. Justice to administer it to president, and he to members.

20. President to designate person to summon delinquents before court.

21. Person designated, to make return.

22. Court to have trial of all delinquents in regiment or battalion.

23. No fines imposed on a commissioned officer, is to prevent him from being cashiered by brigade court-martial.

24. Court may remit penalty for deficiency in equipments.

25. Sentence of court imposing fine for delinquency, may be appealed from.

How appointed and organised.

§ 15. The commandant of each regiment and separate battalion shall on or before the first Monday in June in every year, appoint a regimental or battalion court-martial, to consist of three members; one of whom, if practicable, shall be a field officer or captain, and shall be appointed president thereof.

6 W., 457.

nb.

§ 16. The officer appointing the court shall fix the day on which it shall convene, and when convened, the court may adjourn from time to time as shall become necessary for the transaction of business, but the whole session of the court, from the day on which it shall convene until its dissolution, shall not exceed three weeks.

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Vacancy.

§ 17. In case any vacancy shall happen in the court, or a new court shall be required, the officer ordering the court, or his successor in command, may fill such vacancy, or order a new court.

3 H., 245.

Oath.

§ 18. The president and each member of such court, before he shall enter on his duties as such, shall take the following oath: "I do swear that I will well and truly try and determine, according to evidence, all matters between the people of the state of New York and any person or persons, which shall come before a regimental (or battalion) court-martial of which I have been appointed president, (or a member.)"

nb.

§ 19. Such oath shall be taken by the president, on or before the day on which the court shall convene, before a justice of the county in which he may reside, or a field officer of his regiment or battalion; and it shall be the duty of such justice or field officer, to administer the oath without fee or reward. The president shall administer the oath to each of the members,

§ 20. The president of the court shall direct a non-commissioned officer, or other fit person or persons to be by him designated, to summon all delinquents and parties accused, to appear before the court at a time and place to be by him appointed.

ART. 2.
Delinquents summoned.

§ 21. Such non-commissioned officer, or other person or persons so designated, shall make the like return and with the like effect, as commissioned and non-commissioned officers are authorised and required to make, in cases of warning to a company or regimental parade, and shall be subject to the like penalties for neglect of duty.

Return of summons.

7 J. B., 97.

§ 22. The court, when organized, shall have the trial of all delinquents and deficiencies in the regiment or battalion for which it shall have been called; and shall have power to impose and direct to be levied, all the fines to which commissioned officers of companies, and non-commissioned officers, musicians or privates, are declared to be subject in the first Article of the seventh Title of this Chapter.

Power of court.

§ 23. No fine imposed by a regimental or battalion court-martial, on a commissioned officer, shall prevent such officer from being tried and cashiered for neglect of duty, by a court-martial ordered by the commandant of his brigade.

Effect of fine.

§ 24. Every such court-martial may mitigate, or wholly remit any penalty or fine directed to be imposed, for any deficiency in arms or equipments, of any delinquent in any company of infantry, whom the court shall adjudge to be so poor, as not to be able to furnish himself with such arms or equipments.

Remission of fine.

§ 25. From the sentence of any such court imposing a fine for any delinquency, an appeal, if made within twenty days, shall be allowed to the officer instituting the court, or to his successor in command, who may remit or mitigate such penalty or fine. In case the delinquent was not personally summoned to appear before such court and did not appear; he shall have ten days after personal notice of the sentence in which to appeal from the decision of the officer instituting such court, or his successor in command. An appeal if made within ten days after personal notice of such decision, shall be allowed to the commanding officer of the brigade, who may remit or mitigate such penalty or fine.

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Appeal.

Laws of 1835, ch. 304.

ARTICLE THIRD.

GENERAL PROVISIONS APPLICABLE TO ALL COURTS-MARTIAL AND COURTS OF INQUIRY.

Sec. 26. Presidents of courts, and judge-advocates, to issue subpoenas.

27. President may administer oath to witnesses, and compel their attendance.

28. Penalty for disobeying subpoena.

29. President may commit persons for contempt of court.

30. Warrant to be directed to sheriff, &c., who is to take and commit person to jail.

TITLE 4.

- Sno. 31. Sheriff is to receive and keep every person brought to him
 32. In absence of president, senior officer present to preside.
 33. President may appoint marshals.
 34. Powers and duties of marshals.
 35. Officer hearing appeal to require statement of case and evidence.
 36. Ho may hear further evidence.
 37. Other cases to which two last sections extend.

Subpoenas
for witness-
es.

§ 26. The president of every court-martial, and of every court of inquiry, both before and after he shall have been sworn, and also the judge-advocate, if required, shall issue subpoenas for all witnesses whose attendance at such court may in his opinion be necessary, in behalf of the people of this state, and also on application, for all witnesses in behalf of any officer charged or accused, or person returned as delinquent; and may direct the commandant of any company, to cause such subpoena to be served on any witness residing within his beat.

Oaths to
witnesses.

§ 27. The president of such court-martial or court of inquiry, shall have power to administer the usual oath to witnesses, and shall have the same power to compel attending witnesses to be sworn, and testify, and to preserve order, as courts of common law jurisdiction; and all sheriffs, jailors and constables, are hereby required to execute any precept issued by such president for that purpose.

Penalty on
witness for
non atten-
dance.

§ 28. Every witness not appearing in obedience to such subpoena, when duly served, and not having a sufficient or reasonable excuse, shall forfeit to the people of this state a sum not less than ten nor more than fifty dollars; and the president of such court, shall, from time to time, report to the district attorney the names of all such delinquent witnesses, together with the names and places of residence of the persons serving such subpoenas, the better to enable him to prosecute for such forfeiture.

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Contempt
of court
how pun-
ished.

§ 29. Any person or persons who shall be guilty of disorderly, contemptuous, or insolent behaviour in, or use any insulting or contemptuous or indecorous language or expression to or before, any court-martial or court of inquiry or any member of either of such courts, in open court, may be committed to the jail of the county, in which such court shall sit, by warrant under the hand and seal of the president of such court.

It.

§ 30. Such warrant shall be directed to the sheriff or any or either of the constables and marshals of any such county, or any officer attending the court, and shall command the officer to whom it is directed, to take the body of such person, and to commit him to the jail of the county, there to remain without bail or mainprize, in close confinement, for a time to be limited, not exceeding three days, and until the officer's fees for committing, and the jailor's fees be paid.

It.

§ 31. Such sheriff shall receive the body of any person who shall be brought to him by virtue of such warrant, and keep

him until the expiration of the time mentioned in the warrant, and until the officer's and jailor's fees shall be paid, or until the offender shall be discharged by due course of law.

§ 32. In the absence of the president of any court-martial, or court of inquiry, the senior officer present may preside, with all the powers of the president; and all the members of such courts shall, when on duty, be in full uniform. When senior officer to preside.

§ 33. The president of any court-martial, or court of inquiry, may appoint by warrant, under his hand and seal, one or more marshals. Marshals.

§ 34. The marshals so appointed, may not only perform the usual duties of such marshals, but may also execute all process lawfully issued by such president, and perform all acts and duties in this Chapter, imposed on and authorised to be performed by any sheriff, marshal, or constable. 1b.

7 H., 52.

§ 35. Whenever the sentence of any court-martial shall be appealed from, the officer hearing the appeal, shall require the president of the court-martial to furnish him, forthwith, with a statement of the case, and of the evidence touching the same, which statement and evidence shall, in case of an appeal to the commanding officer of the brigade be forthwith on notice of such appeal transmitted to him. Evidence on appeal.

§ 36. Such statement being furnished, the officer hearing 1b. the appeal may hear such further evidence by affidavit or otherwise as the nature of the case may require; and for that purpose, he shall have power to administer the usual oaths to witnesses produced before him, except in cases where trials may have been had upon charges preferred.

Laws of 1835, ch. 304.

§ 37. The two last sections shall extend to appeals made 1b. from the order of an officer approving the sentence of a court-martial.

TITLE VII.

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OF PENALTIES, FINES, FEES AND EXPENDITURES.

ART. 1. — Of the imposition of penalties and fines, for violating the provisions of this Chapter.

ART. 2. — Of the collection and application of penalties, fines, and commutation money.

ART. 3. — Of the compensation and fees of the members of courts-martial and other officers.

ARTICLE FIRST.

OF THE IMPOSITION OF PENALTIES AND FINES, FOR VIOLATING THE PROVISIONS OF THIS CHAPTER.

- SEC. 1. Penalty on commissioned officers for disobedience, &c.
 2. Commissioned officers refusing to pay over monies, liable to be cashiered.
 3. Fines of officers, musicians and privates, for certain offences.
 4. Non-commissioned officers, for refusing to act to be fined.
 5. Fine for discharging fire-arms.

TITLE 7.

- SAC. 6. Penalties on non-commissioned officers and privates for deficiency in equipments.
7. Penalty for want of bayonet, belt, &c., not to apply to those who have rifles.
 8. Penalty for deficiency in equipments in cavalry.
 9. Court may excuse delinquency for reasonable excuse.
 10. Commandants of companies to cause certain sections to be read.
 11. No actions to be maintained against members or officers of courts-martial in certain cases.

Penalties
on officers.

§ 1. Every commissioned officer, for disobedience of orders, neglect of duty, unofficer-like conduct, or disrespect to a superior officer, or for neglecting to furnish himself with an uniform and equipments within six months after receiving his commission, shall be arrested and brought to trial before a court-martial, who may, on conviction, sentence him to be cashiered, incapacitated from holding any military commission, and fined to an amount not exceeding one hundred dollars; or may sentence him to any part of such penalties, or to be reprimanded, in their discretion; but no penalty shall be inflicted on any officer, for appearing on parade without an esponsion.

Id.

§ 2. Every commissioned officer, refusing to pay over monies in his hands, as is directed in the second Article of this Title, shall be liable to be tried and cashiered, or otherwise punished therefor, by a court-martial.

Fines of
officers,
musicians
and pri-
vates.

§ 3. Every commissioned officer of a company, and every non-commissioned officer, musician and private, shall, on due conviction, be subject, for the following offences, to the fines thereto annexed:

1. Every non-commissioned officer, musician and private, for non-appearance, when duly warned or summoned, at a company parade, a fine of two dollars; at a regimental or battalion parade, or rendezvous of officers, not less than three nor more than six dollars; and at a place of rendezvous, when called into actual service, a sum not exceeding twelve months', nor less than one month's pay.

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2. Every commissioned officer under the rank of colonel for non-attendance at any parade, and every such officer, non-commissioned officer, musician and private, for neglecting or refusing to obey the orders of his superior officers, on any day of parade, or to perform such military duty or exercise as may be required, or departing from his colours, post or guard, or leaving his place or ranks, without permission, a fine not more than twenty-five, nor less than two dollars.

3. For neglecting or refusing to obey any order or warrant, to him lawfully given or directed, or to make a proper return thereof, if such return be necessary, or making a false return, or neglecting or refusing, when required, to summon a delinquent before a court-martial, or duly to return such summons, a fine not more than twenty-five, nor less than five dollars.

Laws of 1835, ch. 304.

Non-com-
missioned

§ 4. Every commissioned officer for neglecting or refusing to act as such when duly elected shall be sentenced to pay a

fine not exceeding fifty dollars, and not less than ten dollars, every non-commissioned officer, for neglecting or refusing to act as such, when duly appointed, shall be sentenced to pay a fine not exceeding twenty dollars, nor less than five dollars; and every officer, for neglect of duty, or disorderly or unofficer-like conduct, in addition to other penalties, may be reduced to the ranks by the commandant of the company, with the approbation of the commandant of the regiment or battalion.

Laws of 1835, ch. 304.

§ 5. Every non-commissioned officer, musician or private, who shall unlawfully discharge any fire-arms within two miles of any parade, on the day thereof, shall be sentenced to pay a fine of one dollar.

Discharging fire-arms.

§ 6. Every non-commissioned officer and private, appearing without being armed and equipped as the law directs, at any parade or rendezvous, shall be sentenced to pay the following fines, namely: For want of a sufficient sword and belt, if belonging to the artillery or light artillery, and for want of a sufficient musket with a steel rod, or rifle, if belonging to a company of light infantry, grenadiers, riflemen or infantry, one dollar; for want of a sufficient bayonet and belt, twenty-five cents; for want of a pouch, with a box therein, sufficient to contain twenty-four cartridges, suited to the bore of his musket, twenty-five cents; for want of two spare flints and a knapsack, twenty-four cartridges, shot-pouch, powder-horn, twenty balls, and a quarter of a pound of powder, twenty-five cents each; but the whole number of spare flints, of cartridges and of balls, shall be considered each as only one deficiency.

Deficiency in equipments.

Laws of 1835, ch. 304.

§ 7. The penalties imposed for want of bayonet, belt, and cartridge-box, shall not apply to any non-commissioned officer, or private, of a rifle company, or to any private of any other company, having a powder-horn and pouch.

Limitation.

Laws of 1835, ch. 304.

§ 8. Each non-commissioned officer and private, in the cavalry, shall be sentenced to pay, as fines, for want of a sufficient horse, one dollar; for want of a sufficient pair of pistols and holster, one dollar; for want of a sufficient sabre, one dollar; for want of a sufficient saddle, bridle, breast-plate, valise, or cartridge-box, twenty-five cents each; for want of a sufficient crupper and mail pillion, twelve and a half cents each.

Cavalry.

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§ 9. The court-martial by which any delinquent is tried, may excuse such delinquent, if it shall be made satisfactorily to appear to the court, that he has a reasonable excuse for such delinquency.

Delinquents when excused.

§ 10. Any commissioned officer who shall retain a commission received by him for any subaltern, for more than thirty days, without giving notice by mail or otherwise, to the person entitled to it, shall be liable to pay a fine not exceeding

Part of this article to be read at parade.

TITLE 7.

twenty-five dollars, to be imposed, in case of the commissioned officer of a company, by a regimental or battalion court-martial, on the complaint of any officer interested, and in case of a general or field officer, by a general court-martial which shall be ordered on the like complaint. In addition to the penalties imposed by any of the provisions of this chapter, every commissioned and non-commissioned officer, musician and private of a company or troop who shall appear on parade wearing any personal disguise, or other unusual or ludicrous article of dress or any arms, weapons or other implements not required by law and calculated to excite ridicule or to interrupt the orderly and peaceable discharge of duty by those under arms, shall be liable to a fine not more than twenty-five, and not less than five dollars, to be imposed by the proper court-martial.

Laws of 1835, ch. 304.

Action
against
member of
court-mar-
tial.

§ 11. No action shall be maintained against any member of a court-martial, or officer or agent acting under its authority, on account of the imposition of a fine, or the execution of a sentence, on a person not liable to military duty, if such person shall have been returned as a delinquent, and duly summoned, and shall have neglected to show his exemption before such court.

ARTICLE SECOND.

OF THE COLLECTION AND APPLICATION OF PENALTIES, FINES, AND COMMUTATION MONEY.

SEC. 12. All fines to be reported to officer ordering court.

13. Collection of fines how enforced.
14. Jailer to keep him in close confinement.
15. Officer to whom list of delinquents delivered, to levy the fine or take body.
16. If unable to do either, a new warrant may be issued.
17. Warrants may be renewed.
18. Monies arising from courts-martial, to be paid to president of court.
19. President after deducting costs, &c., to pay surplus to officer ordering court.
20. He shall furnish statement of monies received for fines.
21. Liable to be cashiered for non-compliance.
22. Presidents to prosecute officers for neglect in execution or return of warrant.
23. Monies collected for such penalties, how applied.
24. Penalties for fines upon officers, how to be collected and paid.
25. Monies received by commandants of regiments and battalions, how applied.
26. They shall keep an account of monies received and expended by them.
27. Commandants of brigades to adjust accounts of commandants of regiments, &c.
28. If commandant of regiment, &c., neglect to pay, commandant of brigade to sue.
29. Officers to whom monies are directed to be paid, to sue for same.
30. Officers suing, may retain reasonable expenses out of money collected.
31. No objection to juror or witness, that he is a member of a regiment or battalion interested in the action.
32. Persons entitled to exemption, on paying the commutation, to give notice.
33. Commandants of companies to make lists of persons entitled to commute.
34. Assessor to deliver to supervisor, and supervisor to board at next meeting.
35. Supervisors to direct collectors to collect commutation money of such persons.
36. Such money to be demanded by collector, and if not paid to be levied by distress and sale.

Sec. 37. How collected, if person be under age, &c.

38. How collected, if he belong to society called Shakers.

39. Collector to pay such fines to city or county treasurer.

40. Proceedings in case default be made in the payment of the commutation fine.

41. For purposes of this Article, aldermen of New York deemed supervisors.

ART. 2

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§ 12. All fines that shall be imposed by any regimental or battalion court-martial, shall be reported by the president of the court to the officer ordering it, or to his successor in command, within twenty days after such fines shall have been imposed; and the officer ordering the court, or successor in command, shall, immediately after the time shall have elapsed in which appeals are allowed from his decision to the commandant of the brigade, give written notice to the president of the court, of the penalties and fines which shall have been by him remitted or mitigated, and of the appeals which shall have been made from his decision to the commandant of the brigade.

Fines to be reported.

Laws of 1835, ch. 304.

§ 13. For the purpose of collecting fines, the president of the court shall within ten days after the receipt of the written notice aforesaid, make a list of all the persons of whom fines are to be collected, designating the company to which they respectively belong; the sums imposed as fines on each person, and the persons who shall have appealed to the commandant of the brigade; and shall draw his warrant under his hand and seal, directed to any constable of any city or county, (as the case may be,) thereby commanding him to levy such fine or fines, together with his costs, of the goods and chattels of such delinquents; and if any such delinquent shall be under age, and live with his father or mother, master or mistress, then to levy such fine or fines, with the costs, of the goods and chattels of such father or mother, master or mistress, as the case may be; and in case the goods and chattels of any delinquent, over the age of twenty-one years, cannot be found wherewith to satisfy the same, then to take the body of such delinquent, and convey him to the jail of the city or county wherein he shall reside.

How to be collected.

Laws of 1835, ch. 304.

§ 14. It shall be the duty of the jailer to whom such delinquent may be delivered, to keep him closely confined, without bail or mainprize, for ten days, for any fine not exceeding two dollars, and two additional days for every dollar above that sum; unless the fine, together with the costs, and the jailer's fees, shall be sooner paid.

Duty of jailer.

§ 15. Every such constable, to whom any such list and warrant shall be directed and delivered, may execute the same by levying and collecting the fines, or by taking the body of the delinquent, in any city, town or county in this state, and shall make return thereof, within forty days from the receipt of such warrant, to the president who issued the same. The

Duty of marshals and constables.

TITLE 7.

execution of said warrant shall be suspended as to those persons who shall have appealed to the commandant of the brigade, until the further order of such commandant.

Laws of 1835, ch. 304.

New warrant.

§ 16. If the constable shall not be able to collect the fines, or take the bodies within the forty days aforesaid, then the president issuing the warrant may, at any time thereafter, within two years from the time of imposing the fines, issue a new warrant against any delinquent, or renew the former warrant, from time to time, as may become necessary.

Laws of 1835, ch. 304.

Warrant renewed.

§ 17. Any warrant for the collection of fines, issued by virtue of this Chapter, shall and may be renewed, in the same manner that executions issued from justices' courts may by law be renewed.

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Monies
where paid.

§ 18. The monies arising from fines imposed by any regimental or battalion court-martial, shall be paid by the officers collecting the same, to the president of the court; the sureties which shall be hereafter given by any constable elect, shall be deemed liable to pay to the president of the court all such sums of money as the said constable may become liable to pay on account of any warrant which shall be delivered to him for collection.

Laws of 1835, ch. 304.

How applied.

§ 19. Such president, after deducting and paying the costs and fees, properly chargeable on the fines so received by him, shall pay the surplus of such fines to the officer by whom the court shall have been ordered.

When to be accounted for.

§ 20. Every such president shall from time to time, as often as he shall be required, furnish to the officer ordering the court, or to his successor in command, a correct statement of all monies received by him on account of fines, and of all fines imposed; and it shall be the duty of the officer instituting every such court, or his successor in command, to make such request within seventy days after any such court shall be held.

Penalty for neglect.

§ 21. Every such president who shall wilfully neglect or refuse to comply with such request, for the space of ten days, shall be liable to be tried and cashiered therefor.

Suits for penalties.

§ 22. It shall be the duty of the respective presidents of courts-martial, to prosecute in their own names, any marshal or constable, who shall incur any penalty for neglect in the execution or return of any warrant, or in paying over monies collected by him.

Monies how applied.

§ 23. The monies arising from such penalties when collected, shall be paid over and applied, as other monies payable to the commandants of regiments and separate battalions, are directed to be paid over and applied, in this Article.

Duty of attorney-gen.
and district attorney.

§ 24. All penalties and fines imposed by courts-martial, upon commissioned officers, shall be collected by the attorney-general, or by the district attorneys of the counties in which

the persons fined may reside, and be paid by the officer collecting the same, into the treasury.

§ 25. All monies received by each commandant of a regiment or separate battalion, shall be expended under the direction of the field officers and commandants of companies in such regiment or battalion, and shall be applied in the first place, to the purchase and repair of colours and instruments of music, and the residue in disciplining and improving such regiment or battalion, in such manner as a majority of the field officers and commandants of companies shall direct.

Monies received by commandants of regiment how applied.

§ 26. It shall be the duty of each commandant of a regiment or separate battalion, to keep an accurate account of all monies by him received and expended, for the use of the regiment or battalion, and to exhibit such account on request, to any commissioned officer of his regiment or battalion, and to deliver it over to his successor in office.

How accounted for.

§ 27. Each commandant of brigade, shall examine and adjust the accounts of the commandants of regiments or separate battalions in his brigade, on or before the first day of May in each year.

(317) Ib.

§ 28. If the commandant of any regiment or separate battalion shall neglect or refuse to pay any monies belonging to such regiment or battalion, as the field officers and commandants of companies shall have directed, the commandant of brigade shall sue in his own name, for such monies, and apply the same when recovered, to the use of the regiment or battalion.

Proceedings in case of neglect to pay.

§ 29. It shall be the duty of the several officers to whom monies are in this Article directed to be paid, in case of the refusal or neglect of the persons directed to account for and pay over such monies, to sue for the same in their own names, but to the uses before specified, in an action for money had and received.

§ 30. Every officer so suing, may retain out of the money he shall collect, all necessary and reasonable expenses he may incur in such suits.

Expenses of suit.

§ 31. It shall be no objection to any person called as a witness, or to serve as a juror in any action authorised in this Article, that he is a member of the regiment or battalion that may be affected by such action.

Jurors.

§ 32. Every person entitled to be exempt from military duty, on the payment of the commutation fine of four dollars, shall, on or before the first day of April in each year, give notice, in writing, and under his oath or affirmation taken before such officer, or a justice of the peace or commissioner of deeds, of his intention so to commute, and that he has conscientious scruples against bearing arms, to the commandant of the company of infantry within the beat of which he shall reside, and such verified notice shall be a sufficient justification for his non-appearance at any parade during the year.

Commutation fines.

TITLE 7.
List to be
made.

§ 33. The commandant of each company of infantry shall, on or before the first day of May, in each year, make out a list of all the persons within his beat who are entitled to commute, and who shall have given such notice, and shall deliver such list, signed by him, to one of the assessors of the towns or wards where such persons shall respectively reside.

Duty of as-
sessor and
supervisor.

§ 34. The assessor receiving such list, shall deliver the same to the supervisor of his town or ward, at the time the assessment roll of such town or ward shall be delivered, and such supervisor shall deliver the list, to the board of supervisors of the county at its next meeting.

Duty of
board of su-
pervisors.

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§ 35. At such meeting, the supervisors shall cause tax lists to be made out, according to the lists so delivered, with warrants thereon, under their hands and seals, directed to the several collectors of the towns or wards, in which the persons named in the lists shall respectively reside, and commanding each collector to levy the sum of four dollars, of the goods and chattels of each person named in the tax list annexed to his warrant.

Duty of col-
lector.

§ 36. It shall be the duty of each collector, to demand and receive the sum of four dollars from each person so named, and in default of payment, to levy that amount by distress and sale of the goods and chattels of the person neglecting or refusing to pay.

Persons un-
der age.

§ 37. If any person named in such tax list shall be under age, and living with his father or mother, or shall then be an apprentice or servant, the father or mother, master or mistress, as the case may be, shall be liable to pay for such person, the sum of four dollars, and in default of payment the collector shall levy that amount by distress and sale of the goods and chattels of such father or mother, master or mistress.

Shakers.

§ 38. If any person on whom such fine shall have been imposed, shall be of the people called Shakers, the society or family to which such person shall belong, shall be liable therefor, and the amount thereof, with costs, shall be levied of the goods and chattels of such society or family.

Fines paid
to treasurer

§ 39. Each collector, within twenty days after such commutation fines shall have been collected by him, shall pay the same, deducting his fees for collection, to the county treasurer.

Proceed-
ings if com-
mutation be
not paid.

§ 40. If any person entitled to exemption, on the payment of the commutation fine, shall have neglected to give the notice required, or shall not have been assessed, and shall be returned as a delinquent to any court-martial, a fine shall be imposed on such person equal in amount to the commutation, which fine shall be collected in the same manner as other fines levied by the same court.

Laws of 1835, chap. 304.

New York.

§ 41. For the purposes of this Article, the alderman of each ward in the city of New-York shall be deemed the supervisor of such ward; and the common council of the city, the board of supervisors of the city and county.

ARTICLE THIRD.

OF THE COMPENSATION AND FEES OF THE MEMBERS OF COURTS-MARTIAL
AND OTHER OFFICERS.

SEC. 42. Compensation of courts-martial or courts of inquiry, payable out of the treasury.

43. What evidence inspectors to furnish, before they receive their pay.
44. Compensation of regimental courts-martial, payable out of fines.
45. No other expenses to be charged on fines received.
46. Fees of officers to whom warrant for collection of fines is issued.
47. For all other services sheriff, &c., entitled to same fees as in other cases.
48. Accounts, how to be audited.
49. Comptroller may draw on treasury for money requisite.

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§ 42. There shall be allowed and paid out of the treasury :

1. To each division and brigade judge-advocate, and to each president and member of any court of inquiry or court-martial for the trial of officers, two dollars for each day actually employed on duty ; and the like compensation to every marshal appointed by any such court, for every day employed in the execution of the duties required of him.

Pay of members of courts, &c.

2. To each brigade-inspector, for inspecting a regiment or separate battalion, six dollars ; for attending each parade of commissioned and non-commissioned officers and musicians, which he is required by law to attend, six dollars ; for making and transmitting to the adjutant-general an inspection return of his brigade, six dollars.

Brigade-inspector.

3. To each military store-keeper, such sum, not exceeding twenty-five dollars, as the commander-in-chief shall think proper to allow.

Store-keepers.

§ 43. No payment shall be made to any brigade-inspector, until he shall have furnished evidence to the comptroller, of his having made out and transmitted the inspection return of his brigade to the adjutant-general, and a copy thereof to his division inspector ; nor shall any payment be made to a division-inspector, until he shall have furnished like evidence, of his having made out and transmitted his division return to the adjutant-general and the commandant of his division.

Inspectors to furnish proof.

§ 44. There shall be allowed and paid out of the fines imposed by each regimental or battalion court-martial, and received by the president thereof :

Pay of regimental court-martial.

1. To the president, one dollar and twenty-five cents for each day he may be actually employed in holding the court or engaged in the business thereof.

2. To each member of the court, one dollar and twenty-five cents for each day he may sit as such member, or may be engaged in travelling to or from the court, allowing twenty miles for a day's travel.

3. To the non-commissioned officer or other person who shall have summoned delinquents to appear before the court, one dollar and twenty-five cents for each day he may have been necessarily so employed, and the same sum for each day of his attendance on the court.

TITLE 7.
List to be
made.

§ 33. The commandant of each company of infantry shall, on or before the first day of May, in each year, make out a list of all the persons within his beat who are entitled to commute, and who shall have given such notice, and shall deliver such list, signed by him, to one of the assessors of the towns or wards where such persons shall respectively reside.

Duty of as-
sessor and
supervisor.

§ 34. The assessor receiving such list, shall deliver the same to the supervisor of his town or ward, at the time the assessment roll of such town or ward shall be delivered, and such supervisor shall deliver the list, to the board of supervisors of the county at its next meeting.

Duty of
board of su-
pervisors.

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§ 35. At such meeting, the supervisors shall cause tax lists to be made out, according to the lists so delivered, with warrants thereon, under their hands and seals, directed to the several collectors of the towns or wards, in which the persons named in the lists shall respectively reside, and commanding each collector to levy the sum of four dollars, of the goods and chattels of each person named in the tax list annexed to his warrant.

Duty of col-
lector.

§ 36. It shall be the duty of each collector, to demand and receive the sum of four dollars from each person so named, and in default of payment, to levy that amount by distress and sale of the goods and chattels of the person neglecting or refusing to pay.

Persons un-
der age.

§ 37. If any person named in such tax list shall be under age, and living with his father or mother, or shall then be an apprentice or servant, the father or mother, master or mistress, as the case may be, shall be liable to pay for such person, the sum of four dollars, and in default of payment the collector shall levy that amount by distress and sale of the goods and chattels of such father or mother, master or mistress.

Shakers.

§ 38. If any person on whom such fine shall have been imposed, shall be of the people called Shakers, the society or family to which such person shall belong, shall be liable therefor, and the amount thereof, with costs, shall be levied of the goods and chattels of such society or family.

Fines paid
to treasurer

§ 39. Each collector, within twenty days after such commutation fines shall have been collected by him, shall pay the same, deducting his fees for collection, to the county treasurer.

Proceed-
ings if com-
mutation be
not paid.

§ 40. If any person entitled to exemption, on the payment of the commutation fine, shall have neglected to give the notice required, or shall not have been assessed, and shall be returned as a delinquent to any court-martial, a fine shall be imposed on such person equal in amount to the commutation, which fine shall be collected in the same manner as other fines levied by the same court.

Laws of 1835, chap. 304.

New York.

§ 41. For the purposes of this Article, the alderman of each ward in the city of New-York shall be deemed the supervisor of such ward; and the common council of the city, the board of supervisors of the city and county.

ARTICLE THIRD.

ART. 3.

OF THE COMPENSATION AND FEES OF THE MEMBERS OF COURTS-MARTIAL
AND OTHER OFFICERS.

SEC. 42. Compensation of courts-martial or courts of inquiry, payable out of the treasury.

43. What evidence inspectors to furnish, before they receive their pay.

44. Compensation of regimental courts-martial, payable out of fines.

[319]

45. No other expenses to be charged on fines received.

46. Fees of officers to whom warrant for collection of fines is issued.

47. For all other services sheriff, &c., entitled to same fees as in other cases.

48. Accounts, how to be audited.

49. Comptroller may draw on treasury for money requisite.

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Pay of members of courts, &c.

2. To each brigade-inspector, for inspecting a regiment or separate battalion, six dollars ; for attending each parade of commissioned and non-commissioned officers and musicians, which he is required by law to attend, six dollars ; for making and transmitting to the adjutant-general an inspection return of his brigade, six dollars.

Brigade-inspector.

3. To each military store-keeper, such sum, not exceeding twenty-five dollars, as the commander-in-chief shall think proper to allow.

Store-keepers.

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3. To the non-commissioned officer or other person who shall have summoned delinquents to appear before the court, one dollar and twenty-five cents for each day he may have been necessarily so employed, and the same sum for each day of his attendance on the court.

TITLE 7.
List to be
made.

§ 33. The commandant of each company of infantry shall, on or before the first day of May, in each year, make out a list of all the persons within his beat who are entitled to commute, and who shall have given such notice, and shall deliver such list, signed by him, to one of the assessors of the towns or wards where such persons shall respectively reside.

Duty of as-
sessor and
supervisor.

§ 34. The assessor receiving such list, shall deliver the same to the supervisor of his town or ward, at the time the assessment roll of such town or ward shall be delivered, and such supervisor shall deliver the list, to the board of supervisors of the county at its next meeting.

Duty of
board of su-
pervisors.

[1818]

§ 35. At such meeting, the supervisors shall cause tax lists to be made out, according to the lists so delivered, with warrants thereon, under their hands and seals, directed to the several collectors of the towns or wards, in which the persons named in the lists shall respectively reside, and commanding each collector to levy the sum of four dollars, of the goods and chattels of each person named in the tax list annexed to his warrant.

Duty of col-
lector.

§ 36. It shall be the duty of each collector, to demand and receive the sum of four dollars from each person so named, and in default of payment, to levy that amount by distress and sale of the goods and chattels of the person neglecting or refusing to pay.

Persons un-
der age.

§ 37. If any person named in such tax list shall be under age, and living with his father or mother, or shall then be an apprentice or servant, the father or mother, master or mistress, as the case may be, shall be liable to pay for such person, the sum of four dollars, and in default of payment the collector shall levy that amount by distress and sale of the goods and chattels of such father or mother, master or mistress.

Shakers.

§ 38. If any person on whom such fine shall have been imposed, shall be of the people called Shakers, the society or family to which such person shall belong, shall be liable therefor, and the amount thereof, with costs, shall be levied of the goods and chattels of such society or family.

Fines paid
to treasurer

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Proceed-
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§ 40. If any person entitled to exemption, on the payment of the commutation fine, shall have neglected to give the notice required, or shall not have been assessed, and shall be returned as a delinquent to any court-martial, a fine shall be imposed on such person equal in amount to the commutation, which fine shall be collected in the same manner as other fines levied by the same court.

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New York.

§ 41. For the purposes of this Article, the alderman of each ward in the city of New-York shall be deemed the supervisor of such ward; and the common council of the city, the board of supervisors of the city and county.

ARTICLE THIRD.

ART. 2.

OF THE COMPENSATION AND FEES OF THE MEMBERS OF COURTS-MARTIAL
AND OTHER OFFICERS.

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[319]

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Pay of members of courts, &c.

2. To each brigade-inspector, for inspecting a regiment or separate battalion, six dollars; for attending each parade of commissioned and non-commissioned officers and musicians, which he is required by law to attend, six dollars; for making and transmitting to the adjutant-general an inspection return of his brigade, six dollars.

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3. To the non-commissioned officer or other person who shall have summoned delinquents to appear before the court, one dollar and twenty-five cents for each day he may have been necessarily so employed, and the same sum for each day of his attendance on the court.

TITLE 7.
List to be made.

§ 33. The commandant of each company of infantry shall, on or before the first day of May, in each year, make out a list of all the persons within his beat who are entitled to commute, and who shall have given such notice, and shall deliver such list, signed by him, to one of the assessors of the towns or wards where such persons shall respectively reside.

Duty of assessor and supervisor.

§ 34. The assessor receiving such list, shall deliver the same to the supervisor of his town or ward, at the time the assessment roll of such town or ward shall be delivered, and such supervisor shall deliver the list, to the board of supervisors of the county at its next meeting.

Duty of board of supervisors.

[318]

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Duty of collector.

§ 36. It shall be the duty of each collector, to demand and receive the sum of four dollars from each person so named, and in default of payment, to levy that amount by distress and sale of the goods and chattels of the person neglecting or refusing to pay.

Persons under age.

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Fines paid to treasurer

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Proceedings if commutation be not paid.

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Duty of
board of su-
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[318]

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[§19]

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Pay of members of courts, &c.

2. To each brigade-inspector, for inspecting a regiment or separate battalion, six dollars ; for attending each parade of commissioned and non-commissioned officers and musicians, which he is required by law to attend, six dollars ; for making and transmitting to the adjutant-general an inspection return of his brigade, six dollars.

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Store-keepers.

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3. To the non-commissioned officer or other person who shall have summoned delinquents to appear before the court, one dollar and twenty-five cents for each day he may have been necessarily so employed, and the same sum for each day of his attendance on the court.

TITLE a.
[390]
 Charge on
 fines.

§ 45. No other sums or expenses whatever, shall be charged on the fines received by the president of any such court; but the president, members and officers shall defray their expenses out of the fees allowed to them respectively.

Fees of
 marshals,
 &c.

§ 46. Each marshal or constable to whom a warrant for the collection of fines may be directed, shall be entitled to the same fees, and be subject to the same penalties for any neglect, as are allowed and provided for, on executions issued out of justices' courts.

Id.

§ 47. For all other services and commitments under this Chapter, the sheriff, jailer, marshals and constables executing the same, shall be entitled to the like fees as for similar services in other cases.

Accounts
 under this
 Article.

§ 48. The accounts of all persons who, under this Article, are entitled to be paid out of the treasury, shall be audited by the comptroller, and of all persons who are entitled to be paid out of the fines imposed by a regimental or battalion court-martial, by the officer ordering the court.

Duty of
 comptroller

§ 49. The comptroller, on the application of the governor, may draw his warrant on the treasurer, for such sums of money as may be requisite in the execution of the provisions of this Chapter; and may require the chief of each staff department to account quarterly, for all monies received by him for purposes connected with his department.

TITLE VIII.

OF THE DUTIES OF CERTAIN STAFF OFFICERS, AND OF VARIOUS MATTERS CONNECTED WITH THEIR RESPECTIVE DEPARTMENTS.

ART. 1. — Of the adjutant-general.

ART. 2. — Of the commissary-general.

ARTICLE FIRST.

OF THE ADJUTANT-GENERAL.

SEC. 1. Adjutant-general to keep a roster of officers.

2. He shall also enter in a book a local description of the several regiments, &c.
3. Commandants of divisions, &c., to furnish him with roster of officers.
4. Books required by him, to be furnished at expense of state.
5. Brigade-inspectors to transmit inspection return to him.
6. [Repealed.]
7. Seal of office. Certified copies of papers, evidence.
8. To cause this Chapter to be printed and distributed.

To keep
 roster.

§ 1. The adjutant-general shall keep a roster of all the officers of the militia of this state above the rank of captain, containing the date of their commissions, their rank, the corps to which they belong, the division, brigade, and regiment of such corps, and the places of their residence, as accurately as can be ascertained, which roster shall be revised and corrected every year.

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 Local de-
 scription.

§ 2. He shall also enter in a book to be kept for that pur-

pose, a local description of the several regiments, brigades and divisions of infantry, artillery and riflemen.

§ 3. It shall be the duty of the commandants of divisions and brigades, to furnish the adjutant-general with a roster of their officers, containing the facts requisite to enable him to comply with the provisions of this Article, and also a description of the regiments and brigades.

Duty of commandants of divisions and brigades.

§ 4. The books required by the adjutant-general to comply with this Article, shall be furnished him at the expense of this state, and shall go to his successors in office.

Books.

§ 5. It shall be the duty of the brigade-inspectors to transmit a copy of the inspection return, annually, to the adjutant-general, and a duplicate of the same to the division inspector, within thirty days after the inspection shall be made.

Duty of brigade inspectors.

Sec. 6. Repealed by Laws of 1831, chap. 257.

§ 7. The seal now used in the office of the adjutant-general shall continue to be the seal of his office, and shall, from time to time, be delivered to his successor in office; and all copies of records or papers in his office, duly certified and authenticated under the said seal, shall be evidence in all cases, in like manner as if the originals were produced.

Seal of office.

§ 8. It shall be the duty of the adjutant-general to cause Chapter tenth of the first part of the Revised Statutes (amended and corrected, pursuant to the provisions of this act), to be printed in a pamphlet form, and to distribute one copy to each commissioned officer in this state; and the comptroller is hereby directed to draw his warrant on the treasurer for the expense of printing such pamphlets.

Pamphlet copies of this Chapter.

Laws of 1835, chap. 304.

ARTICLE SECOND.

OF THE COMMISSARY-GENERAL.

Sec. 9. Commissary-general to keep magazines, &c. in repair, &c.

10. To sell out of arsenals, equipments for militia.
11. He shall dispose, to the best advantage, of all damaged powder, &c.
12. He shall render account of sales made by him.
13. To furnish colours, music, &c.
14. He shall issue powder and ball to artillery companies, for practice.
15. He shall report annually to commander-in-chief.
16. To keep account of the expenses of his department.

§ 9. The commissary-general shall keep in good repair, the arsenals and magazines of the state, and attend to the due preservation and safe keeping, cleaning and repairing of the ordnance, arms, accoutrements, ammunition, munitions of war, and implements of every description, the property of this state; and he shall at all times have the control and disposition of the same, for that purpose.

To keep arsenals, &c., in repair. [3229]

§ 10. He shall sell out of the public arsenals, to any citizen of this state, belonging to the militia, who shall procure a certificate from the commandant of the company to which such person belongs, of his actual residence within the limits

To sell articles from arsenals.

TITLE 8.

of, and of his enrolment in, such company, a good musket and bayonet, with the necessary equipments; or a rifle, pistols, sword, or knapsack, at the price which the same may have cost the state.

Damaged
powder and
arms.

§ 11. He shall dispose, to the best advantage, of all damaged powder, and of all arms, ammunition, accoutrements, tools, implements, and warlike stores of every kind whatsoever, that shall be deemed unsuitable for the use of the state.

Account of
sales.

§ 12. He shall, from time to time, render a just and true account of all sales made by him, with all convenient speed, to the governor, and shall pay the proceeds of such sales into the treasury.

Colors, &c.,
to be fur-
nished.

§ 13. Whenever the commanding officer of a brigade shall certify that a stand of colours, or any drums, fifes or bugles, are necessary for any battalion in his brigade, the commissary-general, with the approbation of the commander-in-chief, shall furnish such battalion with a stand of colours, and a sufficiency of drums, fifes and bugles, at the expense of the state; but no such colours, drums, fifes or bugles, shall be furnished to any brigade at an expense greater than the sum that shall have been theretofore actually paid into the treasury, for fines, in such brigade.

Powder
and balls
to artillery.

§ 14. The commissary-general shall issue the usual allowance of powder and balls to artillery companies, for practice; and the several commandants of artillery companies shall annually report to the commissary-general, the situation and state of the pieces of ordnance, arms, implements, and accoutrements, the property of the state, entrusted to their charge respectively.

Annual re-
port.

§ 15. The commissary-general shall report annually, to the commander-in-chief, whose duty it shall be to transmit the same to the legislature, a true and particular statement, shewing the actual situation and disposition of all the ordnance, arms, ammunition, and other munitions of war, property, and things, which in any wise appertain to, or respect, the department confided to his keeping.

Account of
expenses.

§ 16. He shall keep a just and true account of all the expenses necessarily incurred in and about his department, and once, at least, in every six months, deliver the same to the comptroller, who shall thereupon examine and audit the same; and he shall draw his warrant on the treasurer, for such sum as he shall audit and certify to be due.

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TITLE IX.**MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.**

- Sec.** 1. Non-commissioned officers of infantry to be exempt from military duty.
 2. When commandant of company to give certificate thereof.
 3. Certificate, how to be endorsed.
 4. Non-commissioned officers and musicians, entitled to a deduction from highway labor.
 5. Non-commissioned officers, &c., of uniform companies, exempt from jury duty.

Sec. 6. Officer may give special matter in evidence under general issue.

7. Provisions to extend to all the state.

8. Governor may cause gun houses to be removed.

9. Officers may become supernumerary.

§ 1. Whenever the non-commissioned officers of any company of infantry, shall, in addition to the equipments required by law, uniform and equip themselves in the manner following, that is to say: With an infantry cap, or with the plate and feather heretofore in use in the city of New-York; a tight-bodied blue coat, with yellow or white metal buttons; a white vest and pantaloons, and black gaiters, or half boots; and shall parade, so uniformed and equipped, for the space of seven years then next following, sickness, or unavoidable accidents, or absence excepted, at all parades directed by law; and shall also perform all such military duties, as may be lawfully required of them; such non-commissioned officers shall, from thenceforth, be excused from military duty, except in cases of insurrection or invasion, or except when called into actual service.

Non-commissioned officers of infantry, when to be exempt.

Laws of 1824, 331, § 2.

§ 2. Whenever the non-commissioned officers of any such company, shall appear upon parade, so uniformed and equipped, the commandant of the company shall deliver to every non-commissioned officer belonging to such company, and so appearing at such parade, a certificate in writing, stating that the person therein named, is uniformed and equipped in the manner mentioned in the preceding section, and has so appeared upon parade. Such certificate shall also state, that if the person therein named shall continue to appear at all the parades required by the preceding section, for the space of seven years then next following, sickness and unavoidable accidents, or absence excepted; and if he shall perform all such military duties as may be lawfully required of him, that then he shall from thenceforth be excused from military duty, as above mentioned.

Certificate to be given.

§ 3. The commandant of the company shall, at the last parade in every year, or as soon thereafter as may be convenient, endorse upon such certificate, that the person therein named has paraded, in conformity to the first section of this Title, (if such be the fact, and not otherwise;) and such certificate shall, at the expiration of the said seven years, be countersigned by the commanding officer of the regiment, and be conclusive evidence of the services therein mentioned.

Endorsement to be thereon.

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§ 4. Every non-commissioned officer and musician, who shall produce to the overseer of highways, or person authorized to receive commutations for highway taxes, a certificate from the commandant of his company, of his being equipped, and having done military duty, as required by law, for the preceding year, shall be entitled to a deduction from his labor on the highways, or from his commutation for such labor, of two days.

Deduction from highway tax.

TITLE 1A.

mandant of the regiment to which such company may belong, at such times and in such manner as he may deem best adapted to their improvement in military tactics.

Certificate.

§ 4. The certificate to be granted to such non-commissioned officers and privates, shall conform to the provisions contained in the preceding section.

Removal of persons holding certificate.

§ 5. If any non-commissioned officer or private holding such a certificate, shall remove out of the bounds of his company, battalion, or regiment, but not out of the city of New-York, he may continue to parade with the company in which he was first enrolled; unless excused by the commanding officer of such company, or unless he shall be transferred to another company or regiment, by the direction, or with the consent, of the commanding officer of the regiment to which such company belonged.

Notices, &c., how served.

§ 6. All notices, warrants or summonses to attend any parade, improvement meeting, or court-martial in the city and county of New-York, may be served, by leaving a written or printed notice, containing the substance of such notice, warrant, or summons, at the store, counting-house, or usual place of business of the person to be notified, warned, or summoned, with some person of suitable age and discretion.

Laws of 1835, ch. 304.

Brigade court-martial.

§ 7. The commandant of each brigade shall, on or before the first day of June in every year, appoint a brigade court-martial, to serve also as a court of inquiry, to consist of three commissioned officers; except when a captain or subaltern is to be tried for absence from any parade or improvement meeting, in which case such commandant shall appoint two additional commissioned officers to be members of the court, and in case any captain or subaltern under arrest is to be tried on charges and specifications, he shall also detail five supernumerary officers to act in case the number of the ordinary members shall be reduced, by challenge or otherwise, below five.

Laws of 1835, ch. 304.

It.

§ 8. Such court-martial shall have the trial of all offences and delinquencies within the limits of the brigade, which may be brought to trial within the year ending on the thirty-first day of May then next, except for offences and delinquencies of officers above the rank of colonel.

Vacancy.

§ 9. The officer ordering such court shall have power to supply any vacancy which may happen therein.

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Duty of commandant of brigade.

§ 10. The commandant of brigade appointing any court-martial, shall forthwith deliver over all returns of delinquencies that shall come to his hands, to the president of such court-martial, or to the brigade judge-advocate.

When court to assemble

§ 11. Every such court martial shall assemble once at least in every year, at such place as the commandant of the brigade shall from time to time direct; and on its first assembling, the

brigade judge-advocate, and in case of there being no brigade judge-advocate, qualified to act as such, then such judge-advocate as the commandant of the brigade shall appoint for the time being, shall administer to each member of the court then appearing, and afterwards to such other members of the court as may thereafter appear, the oath prescribed in the ninth section of the sixth Title of this Chapter.

§ 12. The president of every such court-martial shall appoint a marshal for said court, which appointment may be made either before or after the president shall have been sworn.

Marshal.

§ 13. He shall direct such marshal to summon all delinquents and parties accused, to appear before the court at the time and place by him in orders appointed; and such marshal shall make the like return, and with the like effect, as commissioned and non-commissioned officers are authorised and required to make in cases of warning to a company or regimental parade, and shall be subject to the like penalties for neglect of duty.

His duty.

§ 14. The brigade judge-advocate may issue summonses, subpoenas, and all other needful process, under his official signature; and the same shall be as effectual as if issued by the president of the court.

Summonses,
subpoenas,
&c.

§ 15. Every person who shall, after having been duly notified or summoned, refuse or neglect to appear before the court, may be proceeded against as if he was personally present, and had pleaded not guilty.

Persons not
appearing.

§ 16. Every such court-martial, on the application of any delinquent, fined by default for not appearing, who shall make satisfactory excuse to the court for his default, may re-consider his case; and on sufficient cause being shown, may remit the fine, penalty or forfeiture, or direct the same to be repaid if collected.

Default
when
opened.

§ 17. No sentence of any such court-martial upon any commissioned officer shall be carried into effect, until such sentence shall be approved by the officer ordering the court.

Approval of
sentence.

§ 18. From the sentence of every such court-martial, imposing a fine for any delinquency, an appeal, if made within twenty days, shall be allowed to the commandant of the brigade.

Appeal.

§ 19. It shall be the duty of the adjutant of each regiment to return all absent officers from any parade to the proper court-martial; and every officer who shall absent himself from any parade, may be punished by fine, not exceeding twenty-five dollars for each parade.

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Penalty for
absence.

§ 20. Every commissioned and non-commissioned officer who shall absent himself from any of the improvement meetings, mentioned in the second section of this Article, without such excuse as the officer ordering the meeting shall deem sufficient, may be punished by fine of not less than two nor more than five dollars for every such offence.

Ib.

§ 21. All fines imposed by any such court-martial, shall be

Fines to be
reported.

TITLE 10.

reported by the president of the court within thirty days after they shall be imposed, to the commandant of the brigade by whom the court shall have been ordered.

List of persons fined and warrant.

§ 22. For the purpose of collecting such fines, the president of the court shall, within thirty days after such fines shall have been imposed, make a list of all persons fined by such court-martial, and who shall not have paid their fines, designating therein the number of the street or ward in which each delinquent resides, and the amount of the fine or fines imposed upon him; and he shall also draw his warrant under his hand and seal, directed to any constable or marshal of the city and county, or other special deputy that may be appointed for that purpose by such court-martial.

Contents of warrant.

§ 23. The warrant shall command the person to whom it may be directed, to levy the fine or fines of each delinquent, together with the fees for collecting the same, of the goods and chattels of such delinquent; and if any such delinquent shall be under age, and live with his father or mother, master or mistress, then to levy such fine or fines, with such fees, of the goods and chattels of such father or mother, master or mistress, as the case may be; and for want of goods and chattels whereon to levy, to take the body of such delinquent, and him to deliver to the keeper of the jail in said city and county.

Return of warrant.

§ 24. The person to whom such warrant shall be directed, shall return it to the president of the court-martial in forty days, with a return of his proceedings thereon; and shall, on or before the expiration of the time limited for the return of the warrant, account to the president or his successor, under oath, and pay to him or his successor, all monies he may have collected or received in virtue thereof.

New warrant.

§ 25. In case he shall return any of the delinquents not found, it shall be lawful for such president, or his successor, in like manner, to issue another and a further warrant against such delinquents so, from time to time, returned not found, until the whole of the fines shall have been collected, or the bodies of the delinquents taken.

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Duty and fees of officers.

§ 26. The person to whom any such warrant shall be delivered, in executing the same, shall proceed in the same manner, be entitled to the same fees, and be subject to the same penalties, as in cases of execution issued out of the marine court, in the said city.

Duty of jailer.

§ 27. The keeper of the jail in said city and county, shall receive the body of every person committed under any such warrant, and shall keep him closely confined in such jail, without bail or mainprize, until the fine or fines, for which he shall have been committed, together with the fees for executing the warrant, and the jailer's fees, shall be paid; but the jailer shall set at liberty every such person after he shall have been so confined ten days.

Presidents of courts.

§ 28. The president of every brigade court-martial shall annually, on the first Monday in March, and oftener if required,

ART. 2
martial to
account.

Monies
how ap-
plied.

account upon oath, and pay over to the commandant of the brigade who shall have ordered the said court, and to the commandants of regiments or separate battalions, within his brigade, who are hereby constituted a board of officers for that purpose, or to a treasurer by them to be appointed, all the monies which he may receive as aforesaid.

§ 29. Such monies shall be appropriated by the board,

1. To the payment for room hire and stationery, and for the compensation allowed to the brigade inspector, brigade judge-advocate, and members of the courts-martial and courts of inquiry of the brigade, and the marshals appointed by such courts respectively.

2. To the purchase and repair of colours and instruments of music; the payment, instruction, and equipment of musicians; the printing of orders and notices, and such other military purposes as shall be directed and allowed by the board of officers.

ARTICLE SECOND.

OF THE FIRST AND SIXTH BRIGADES OF NEW YORK STATE ARTILLERY.

SEC. 30. First and sixth brigades of state artillery, to use same weapons, now in use.

31. Weapons, &c. and horse enrolled for service, exempt from execution.
32. Officers exempt from military duty after six years' service.
33. Non-commissioned officers, &c. exempt after seven years' service.
34. Persons entitled to a reduction of 500 dollars, from assessment.
35. Officers, &c. in light artillery to have reduction of one thousand dollars.
36. Officers, &c., exempt from jury duty.
37. Regiments of said brigades shall be ordered out for exercise.
38. Officers of said brigades to be exercised four times annually.
39. Each regiment to receive from state military stores, powder, &c. for exercise.
40. To be a review for the inspection of brigades annually.
41. Light artillery, may be ordered out not less than eight, nor more than twelve times annually.
42. Officers, &c. how warned to appear at parade.
43. In cases of invasion, &c. written notices not necessary.
44. Commandants of companies to make a return of persons absent.
45. Brigade inspector to make return of officers, &c. present at inspection.
46. Commandants of regiments to make return of officers, &c. absent from inspection.
47. Brigade courts-martial to prescribe or alter forms of returns.
48. When they prescribe or alter forms, notice to be published in orders.
49. Commandant of brigade to appoint brigade court-martial annually.
50. It shall have the trial of delinquencies in brigade below the rank of captain.
51. Provisions of first Article to apply to said brigades of artillery.
52. Punishments, for not conforming to the provisions of this Article.
53. Fines imposed, how collected.
54. How disposed of when collected.
55. President and judge-advocate to receive two dollars per day.
56. When officer is convicted upon charges preferred against him, to pay costs.
57. Last section not to extend to arrests made by commandants of brigades, &c.
58. Commandants of regiments, &c. to account annually for monies received.
59. How much monies expended and applied.
60. Brigade inspectors to keep a roster of officers in their brigade.
61. Officers and privates of artillery, not in New York, their privileges.

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§ 30. The several companies and regiments composing the Weapons.

TITLE 10.

scribe, and from time to time to alter the forms of returns of delinquencies to be made by commandants of regiments and companies, and also to prescribe or alter the forms of returns made by non-commissioned officers, of persons warned by them to appear on parade.

Alterations
therein.

§ 48. Whenever such court-martial shall prescribe or alter the form of any return, notice thereof shall be published in orders; after which, such returns shall be made in the form directed by the court.

Brigade
court-mar-
tial.

§ 49. The commandant of each brigade shall, on or before the first day of June in each year, appoint a brigade court-martial, to serve also as a brigade court of inquiry, to consist of five commissioned officers, at least one of whom shall be a field officer, and president thereof, and any three of whom, including such president, may make a quorum, except when a captain or subaltern is tried, in which case five members shall be present; and the commandant shall also detail five supernumeraries, to act in case the number of the ordinary members shall be reduced by challenge or otherwise below five.

Power
thereof.

§ 50. Each court-martial shall have the trial of all offences and delinquencies in its brigade, which may be brought to trial within the year ending on the thirty-first day of May, then next; except such offences and delinquencies of officers above the rank of captain, as are not provided for in the fifty-second section of this Article.

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Former
Article of
this Title
extended.
Penalties
and fines.

§ 51. The provisions of the first Article of this Title, from section nine to section eighteen, both inclusive, shall apply to the courts-martial of said brigades of artillery.

§ 52. The following punishments, penalties and fines, shall be incurred and imposed, for not conforming to the provisions of this Article, unless a satisfactory excuse be produced to the court-martial. -

1. Every commissioned officer who shall neglect to appear and do duty, in the complete uniform and equipments of his corps, at any parade for exercise, when thereunto duly notified, shall forfeit and pay a penalty not exceeding ten dollars for every such neglect.

2. Every non-commissioned officer, musician and private, who shall so neglect to appear, shall forfeit and pay a penalty not exceeding five dollars for every such neglect.

3. Every commissioned officer absenting himself from any meeting for improvement, shall forfeit and pay a penalty of three dollars for every such neglect.

4. Every non-commissioned officer, who shall neglect to execute any warrant or order to him directed, or to return such warrant; or shall make a false return thereof; or shall neglect or refuse to appear at the place of rendezvous mentioned in such warrant; or neglect or refuse to summon any delinquent to appear before any court-martial, when thereunto required by a summons from the president; or shall neglect to return any such summons, in his own proper person, before

such court-martial, shall forfeit and pay for every such offence, a fine not less than five, nor more than twenty-five dollars.

5. Every commissioned officer, for disobedience of orders, neglect of duty, unofficer-like conduct and behaviour, or disrespect to a superior officer; or for neglect to furnish himself with a uniform and side-arms, within six months after he receives his commission; shall be arrested and brought to trial before a court-martial, who may, on conviction, sentence him to be cashiered, and may impose a fine not exceeding ninety-five dollars, or may sentence him to any part of said punishment or penalties, or to be reprimanded or suspended, as the said court-martial shall think proper.

6. Every non-commissioned officer, for neglecting or refusing to act as such when duly appointed, shall be sentenced to pay a fine, not exceeding twenty, nor less than five dollars.

7. Every non-commissioned officer, musician or private, who shall, on any day of parade, neglect or refuse to obey the orders of his superior officers, or to perform such military duty or exercise as may be required, or shall depart from his colours, post or guard, or leave the ranks without permission, shall be sentenced to pay a fine not exceeding twenty-five, nor less than two dollars.

§ 53. All fines imposed by the brigade court-martial, shall be collected in the manner prescribed in the first Article of this Title; except that the president of the court shall, within sixty days after any fines have been imposed, issue his warrant for their collection, directed to the keeper of the jail in the city and county, or in the county in which the delinquent shall reside; and except also, that the jailer shall set at liberty, any person confined by virtue of such warrant, after he shall have been in close confinement for fifteen days.

Fines how collected.

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§ 54. All such fines, when collected, after deducting the pay of the president and judge-advocate, and of the marshal, constable, or special deputy, and all necessary expense for room hire, stationery and printing, shall be divided amongst, and paid to, the several commandants of regiments and separate battalions, in the brigade in which such fines shall have been collected, in proportion to the whole amount of fines collected from said regiments and separate battalions, respectively; but in such a manner, that the expenses incurred in and about the trial of delinquencies, and other offences, returned from each regiment, or arising therein, shall be defrayed out of the fines which may have been, or may be afterwards collected therefrom, as far as the same may go.

How applied.

§ 55. The president of the court, and the judge-advocate, shall each be entitled to two dollars per day, while on actual duty; and none of the other members of the court, shall be paid for their services; but it shall, nevertheless, be their duty to attend the said court.

Compensation of members of court.

§ 56. When any officer, arrested upon charges preferred against him, shall be convicted, he shall pay the costs of the

Costs of prosecution

TITLE 12.

scribe, and from time to time to alter the forms of returns of delinquencies to be made by commandants of regiments and companies, and also to prescribe or alter the forms of returns made by non-commissioned officers, of persons warned by them to appear on parade.

Alterations
therein.

§ 48. Whenever such court-martial shall prescribe or alter the form of any return, notice thereof shall be published in orders; after which, such returns shall be made in the form directed by the court.

Brigade
court-mar-
tial.

§ 49. The commandant of each brigade shall, on or before the first day of June in each year, appoint a brigade court-martial, to serve also as a brigade court of inquiry, to consist of five commissioned officers, at least one of whom shall be a field officer, and president thereof, and any three of whom, including such president, may make a quorum, except when a captain or subaltern is tried, in which case five members shall be present; and the commandant shall also detail five supernumeraries, to act in case the number of the ordinary members shall be reduced by challenge or otherwise below five.

Power
thereof.

§ 50. Each court-martial shall have the trial of all offences and delinquencies in its brigade, which may be brought to trial within the year ending on the thirty-first day of May, then next; except such offences and delinquencies of officers above the rank of captain, as are not provided for in the fifty-second section of this Article.

[333]
Former
Article of
this Title
extended.
Penalties
and fines.

§ 51. The provisions of the first Article of this Title, from section nine to section eighteen, both inclusive, shall apply to the courts-martial of said brigades of artillery.

§ 52. The following punishments, penalties and fines, shall be incurred and imposed, for not conforming to the provisions of this Article, unless a satisfactory excuse be produced to the court-martial. -

1. Every commissioned officer who shall neglect to appear and do duty, in the complete uniform and equipments of his corps, at any parade for exercise, when thereunto duly notified, shall forfeit and pay a penalty not exceeding ten dollars for every such neglect.

2. Every non-commissioned officer, musician and private, who shall so neglect to appear, shall forfeit and pay a penalty not exceeding five dollars for every such neglect.

3. Every commissioned officer absenting himself from any meeting for improvement, shall forfeit and pay a penalty of three dollars for every such neglect.

4. Every non-commissioned officer, who shall neglect to execute any warrant or order to him directed, or to return such warrant; or shall make a false return thereof; or shall neglect or refuse to appear at the place of rendezvous mentioned in such warrant; or neglect or refuse to summon any delinquent to appear before any court-martial, when thereunto required by a summons from the president; or shall neglect to return any such summons, in his own proper person, before

such court-martial, shall forfeit and pay for every such offence, a fine not less than five, nor more than twenty-five dollars.

5. Every commissioned officer, for disobedience of orders, neglect of duty, unofficer-like conduct and behaviour, or disrespect to a superior officer; or for neglect to furnish himself with a uniform and side-arms, within six months after he receives his commission; shall be arrested and brought to trial before a court-martial, who may, on conviction, sentence him to be cashiered, and may impose a fine not exceeding ninety-five dollars, or may sentence him to any part of said punishment or penalties, or to be reprimanded or suspended, as the said court-martial shall think proper.

6. Every non-commissioned officer, for neglecting or refusing to act as such when duly appointed, shall be sentenced to pay a fine, not exceeding twenty, nor less than five dollars.

7. Every non-commissioned officer, musician or private, who shall, on any day of parade, neglect or refuse to obey the orders of his superior officers, or to perform such military duty or exercise as may be required, or shall depart from his colours, post or guard, or leave the ranks without permission, shall be sentenced to pay a fine not exceeding twenty-five, nor less than two dollars.

§ 53. All fines imposed by the brigade court-martial, shall be collected in the manner prescribed in the first Article of this Title; except that the president of the court shall, within sixty days after any fines have been imposed, issue his warrant for their collection, directed to the keeper of the jail in the city and county, or in the county in which the delinquent shall reside; and except also, that the jailer shall set at liberty, any person confined by virtue of such warrant, after he shall have been in close confinement for fifteen days.

Fines how collected.

[334]

§ 54. All such fines, when collected, after deducting the pay of the president and judge-advocate, and of the marshal, constable, or special deputy, and all necessary expense for room hire, stationery and printing, shall be divided amongst, and paid to, the several commandants of regiments and separate battalions, in the brigade in which such fines shall have been collected, in proportion to the whole amount of fines collected from said regiments and separate battalions, respectively; but in such a manner, that the expenses incurred in and about the trial of delinquencies, and other offences, returned from each regiment, or arising therein, shall be defrayed out of the fines which may have been, or may be afterwards collected therefrom, as far as the same may go.

How applied.

§ 55. The president of the court, and the judge-advocate, shall each be entitled to two dollars per day, while on actual duty; and none of the other members of the court, shall be paid for their services; but it shall, nevertheless, be their duty to attend the said court.

Compensation of members of court.

§ 56. When any officer, arrested upon charges preferred against him, shall be convicted, he shall pay the costs of the

Costs of prosecution

TITLE 10.

prosecution; and if he be acquitted, the court shall have power, in its discretion, to direct the costs to be paid by the prosecutor, or person preferring such charges; and the president shall issue his warrant for the collection thereof, in the same manner as for the collection of a fine.

Last section qualified.

§ 57. The last preceding section shall not extend to any arrest made by the commandant of the brigade, or the commandant of any regiment or separate battalion therein, on charges preferred by the officer arresting.

Commandants to account for monies.

§ 58. The commandants of regiments and separate battalions, shall, on the first Tuesday in May, in each year, render an account, on oath, of all the monies by them respectively received and expended, to the commandant of their brigade.

Those monies how applied.

§ 59. They shall apply and expend such monies toward the payment of regimental expenses, as has been heretofore customary; and if any balance shall remain in their hands, upon the rendering of such account, unexpended or unappropriated, they shall pay the same to the commandant of their brigade, to be by him applied towards paying the expenses of the brigade.

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Roster.

§ 60. Each brigade-inspector shall keep a roster of all the officers in his brigade, below the rank of major.

Privileges and exemptions of artillery not in New York.

§ 61. All officers, non-commissioned officers, privates, and musicians, of any troop, or company of artillery, not in the city of New-York, now attached to the command of the commandant of the sixth brigade, or to any regiment thereof, shall continue to be attached to the same; and while so attached, they shall be entitled to all the privileges and exemptions, that are enjoyed by the officers, non-commissioned officers, and privates, of such brigade of artillery, and be subject to the same duties, and in like manner answerable for all delinquencies and offences.

ARTICLE THIRD.

OF THE FIRST BRIGADE OF LIGHT ARTILLERY.

SEC. 62. What to compose "first brigade of light artillery;" how to be equipped.

63. Rights, privileges, exemptions and duties, of said brigade.

How composed and equipped.

§ 62. The two regiments of light artillery, in the counties of New-York, Kings, Queens, Richmond, Suffolk, and Westchester, now organized into a brigade, shall continue to be a brigade, to be denominated the "First Brigade of Light Artillery;" and the several troops and companies composing the same, shall be armed and equipped as cavalry, and liable to duty as light artillery; but nothing in this section contained, shall prevent the commander-in-chief from disbanding said brigade, if, in his opinion, it shall become proper or expedient.

Privileges and exemptions.

§ 63. The officers, non-commissioned officers, musicians, and privates, belonging to such brigade, shall have and enjoy, all the rights, privileges, and exemptions, and be subject to all the duties, as to the number of parades, both of officers, non-commissioned officers, and privates, and liable to the same

penalties, which are granted to, and imposed upon, the first and sixth brigades of New-York state artillery, and any troop, or company of light artillery, attached thereto.

ARTICLE FOURTH.

OTHER SPECIAL PROVISIONS.

SEC. 64. Certain sections to extend to Albany, Rensselaer and Schenectady.

65. The officers shall meet for improvement eight times a year.

66. Officers absent from such meeting, to be fined; delinquents to be reported.

67. Certain section extended to Albany.

68. Persons under eighteen years not to enlist in cavalry or artillery.

69. No regimental or battalion parade required in Hamilton county.

§ 64. The first, second and third sections of the ninth Title, and the third and fourth sections of this Title, shall extend to the several regiments, battalions, and companies of artillery, light artillery, cavalry, light infantry, and riflemen, in the city and county of Albany, in the county of Rensselaer, and in the city and county of Schenectady, so long as such regiments, battalions, and companies, shall keep themselves uniformed, armed and equipped, according to law, and to the uniform and equipments of their respective corps.

Albany,
Rensselaer
and Sche-
nectady.
[336]

§ 65. The officers, non-commissioned officers and musicians of such regiments, battalions, and companies, shall meet for military improvement, not less than eight times in each year, at such hours in the day as may be directed for that purpose; three of the said meetings to be ordered by the commandants of brigades, and the residue, by the commanding officers of regiments, or separate battalions.

§ 66. Every such commissioned officer, who shall absent himself from any such meeting, without such excuse as the officer ordering the meeting shall deem sufficient, shall be subject to a fine of not less than two, nor more than five dollars, for every such offence. The names of such delinquents shall be returned to the proper court-martial by the brigade inspector, or the adjutant, as the case may require, within thirty days after such meeting.

§ 67. The provisions and requirements of the sixth section of this Title, shall apply to the city of Albany.

§ 68. Persons under eighteen years of age, in the city of New-York, shall in no case, be permitted to enlist in any company, or troop of cavalry, artillery, or light artillery, light infantry or riflemen.

§ 69. The militia in the county of Hamilton, shall not be required to parade at any battalion or regimental parade; but the captains of the several companies, shall annually inspect their several companies, and make inspection returns thereof, to the brigade inspector, on or before the first day of November, in each year, and shall also make return of delinquents, to the judge-advocate of the brigade, on or before the first day of October, in each year.

Hamilton
county.

TITLE 1.

CHAP. XI.

Of the Powers, Duties, and Privileges of Towns.

(Took effect January 1, 1830.)

TITLE 1. — Of towns, as bodies corporate.

TITLE 2. — Of town meetings, and the time, purposes and manner of holding them.

TITLE 3. — Of the election and qualifications of town officers, and the tenure of their offices.

TITLE 4. — Of the general duties of certain town officers, and of various matters connected therewith.

[837] TITLE 5. — Of legal proceedings in favor of, and against towns.

TITLE 6. — Miscellaneous provisions of a general nature.

TITLE 7. — Local and special provisions.

TITLE I.

OF TOWNS, AS BODIES CORPORATE.

ART. 1. — Of the powers and rights of towns, as bodies corporate.

ART. 2. — Of the effects of the division of a town, on its corporate rights and liabilities.

ARTICLE FIRST.

OF THE POWERS AND RIGHTS OF TOWNS, AS BODIES CORPORATE.

SEC. 1. Powers of towns as bodies corporate, defined.

2. Limitations of those powers.

3. In what name towns to act.

Powers of
towns as
bodies cor-
porate.

§ 1. Each town, as a body corporate, has capacity,

1. To sue and be sued, in the manner prescribed in the laws of this state:

2. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the power of the legislature over such limits:

3. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its corporate or administrative powers: And,

4. To make such orders for the disposition, regulation or use of its corporate property, as may be deemed conducive to the interests of its inhabitants.

11 N. Y., 394; 22 B., 645; 2 J. C. R., 320.

Limitation.

§ 2. No town shall possess or exercise any corporate powers, except such as are enumerated in this Chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or given.

In what
name to act

§ 3. All acts or proceedings by or against a town, in its corporate capacity, shall be in the name of such town; but every conveyance of lands within the limits of such town, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name.

8 B., 645.

ARTICLE SECOND.

OF THE EFFECTS OF THE DIVISION OF A TOWN, ON ITS CORPORATE RIGHTS AND LIABILITIES.

SEC. 4. When a town owning lands is divided, agreement for disposition.

5. When a town is altered in its limits, a like agreement.

6. If no agreement, land to be sold, and proceeds apportioned.

7. Personal property to be apportioned.

8. Meetings may be called by either of the supervisors.

9. Burying grounds excepted from preceding sections.

10. Debts owing to a town divided or altered, to be apportioned.

11. This Title is not to apply to gospel and school lots.

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§ 4. When a town seised of lands shall be divided into two or more towns, the supervisors and overseers of the poor of the several towns constituted by such division, shall meet as soon as may be, after the first town-meetings subsequently held in such towns, and when so met, shall have power to make such agreement, concerning the disposition to be made of such town lands and the apportionment of the proceeds, as they shall think equitable, and to take all measures and execute all conveyances which may be necessary to carry such agreement into effect.

Town lands
how to be
disposed of
on division
of town.

§ 5. When any such town shall be altered in its limits, by the annexing of a part of its territory to another town, or towns, the supervisors and overseers of the poor of the town from which such territory shall be taken, and of the town or towns to which the same shall be annexed, shall, as soon as may be after such alteration, meet for the purpose, and possess the powers provided in the last preceding section.

When
part of
town is an-
nexed to
another.

§ 6. If no agreement for the disposition of such lands, shall be made by the supervisors and overseers, within six months after such division or alteration, then the supervisor and overseers of the poor of each town in which any portion of said lands shall lie, shall proceed, as soon as may be, to sell and convey such part of said lands as shall be included within the limits of such town, as fixed by the division or alteration; and the proceeds arising from such sale shall be apportioned between the several towns interested therein, by the supervisors and overseers of the poor of all the towns, according to the amount of taxable property in the town divided or altered, as the same existed immediately before such division or alteration, to be ascertained by the last assessment list of such town.

If no agree-
ment be
made, land
to be sold.

§ 7. When a town possessed of or entitled to money, rights and credits, or other personal estate, shall be so divided or altered, such personal estate, including monies belonging to the town in the hands of town officers, shall be apportioned between the towns interested therein, by the supervisors and overseers of such towns, (who shall meet for that purpose as soon as may be after the first town-meetings subsequently held in such towns,) according to the rule of apportionment above prescribed.

Personal
property,
how appor-
tioned.

TITLE 1.
Meetings
under this
article, how
called.
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§ 8. Whenever a meeting of the supervisors and overseers of two or more towns shall be required, in order to carry into effect the provisions of this article, such meeting may be called by either of said supervisors; but the supervisor calling the same, shall give at least three days' notice in writing to all the other officers, of the time and place at which such meeting is to be held.

Cemeteries
excepted.

§ 9. The preceding sections shall not, however, apply to any cemetery, or burial ground; but the same shall belong to the town within which it may be situated, after a division shall have been made.

Debts to be
apportioned.

§ 10. Debts owing by a town so divided or altered, shall be apportioned in the same manner as the personal property of such town; and each town shall thereafter be charged with its share of such debts, according to such apportionment.

Gospel and
school lots.
[See post ch.
15, Title 4.]

§ 11. Nothing contained in this Title shall apply to any of the lots heretofore granted by the people of this state to any town, for the support of the gospel and of schools, commonly called the gospel and school lots.

TITLE II.

OF TOWN-MEETINGS, AND THE TIME, PURPOSES AND MANNER OF HOLDING THEM.

ART. 1. — Of annual and special town-meetings.

ART. 2. — Of the mode of conducting town-meetings.

ARTICLE FIRST.

OF ANNUAL AND SPECIAL TOWN-MEETINGS.

SEC. 1 & 2. Annual town-meetings when and where held.

3. Enumeration of officers to be chosen at town-meetings.

4. Assessors and commissioners of highways to be fence viewers.

5. Powers of electors at annual town-meetings.

6. Additional power in regard to the poor.

7. Special town-meetings when to be held.

8. When notice is to be given.

9. Orders and regulations of town-meetings to be in force until repealed or altered.

10. No civil process to be served, on the day of town-meeting.

Annual
town meet-
ings when
held.

§ 1. The citizens of the several towns in this state, qualified by the constitution to vote for elective officers, shall annually assemble and hold town-meetings in their respective towns, at such place in each town, as the electors thereof at their annual town-meeting shall from time to time appoint.

2 R. L., 125, § 1 & 5; Laws of 1823, 207, § 5; 5 N. Y., 23; 8 Cow., 286.

Time of
holding an-
nual town
meetings.

§ 2. Each town shall hold its next annual town-meeting on the day now provided by law for such town, and the electors thereof shall then, and immediately before proceeding to the choice of town officers, fix the time for holding the annual town-meetings in such town; and all annual town-meetings in the respective towns, shall thereafter be held at such times as shall have been, from time to time, prescribed by the elec-

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tors thereof, at their annual town-meeting. The time to be so fixed shall always be on some Tuesday between the first Tuesday in February and the first Tuesday in May, in each year; and when fixed, shall not be altered at any time within three years thereafter.

See Laws of 1839, ch. 389, § 15.

§ 3. There shall be chosen at the annual town-meeting in each town, one supervisor; one town clerk; not less than three, nor more than five assessors; one collector; two overseers of the poor; three commissioners of highways; three commissioners, and three inspectors of common schools; not more than five constables; one town sealer of weights and measures; as many overseers of highways as there are road districts in the town, except in the counties of Suffolk, Queens, Kings, and Richmond; and so many pound-masters, as the electors may determine.

Officers to be chosen.

1 R. L., 376, § 2; Laws of 1819, 190, § 9; 5 N. Y., 23; 21 W., 181.

§ 4. The assessors and commissioners of highways elected in every town shall, by virtue of their offices, be fence viewers of their town.

Fence viewers.

§ 5. The electors of each town shall have power at their annual town-meeting,

Powers of annual town meetings.

1. To determine what number of assessors, constables and pound-masters, shall be chosen in such town for the then ensuing year:

2. To elect such town officers as may be required to be chosen:

3. To direct such sum to be raised in such town, for the support of common schools for the then ensuing year, as they may deem necessary, but not exceeding a sum equal to the amount required by law to be raised therein for that purpose:

4. To direct the institution or defence of suits at law or in equity, in all controversies between such town and corporations, individuals, or other towns:

5. To direct such sum to be raised in such town for prosecuting or defending such suits, as they may deem necessary:

6. To take measures and give directions for the exercise of their corporate powers:

7. To make such provisions and allow such rewards for the destruction of noxious weeds, as they may deem necessary, and to raise money therefor:

8. To establish and maintain pounds at such places within such town as may be convenient:

9. To establish the compensation of the fence viewers, commissioners and inspectors of schools and collector of such town; but the compensation of such collector shall in no case be more than five, nor less than three per cent:

10. To make, from time to time, such prudential rules and regulations, as they may think proper, for the better improving of all lands owned by such town in its corporate capacity,

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TITLE 1.

whether commons, or otherwise; for maintaining and amending partition or other fences around the same, or any part thereof, and circular fences for their lands, gardens, orchards and meadows; for protecting such lands from any trespass, and for directing the time and manner of using the same:

11. To make the like rules and regulations for ascertaining the sufficiency of all fences in such town; for determining the times and manner in which cattle, horses, or sheep, shall be permitted to go at large on highways; and for impounding animals:

12. To impose such penalties on persons offending against any rule or regulation established by such town, excepting such as relate to the keeping and maintaining of fences, as they may think proper; not exceeding twelve dollars and fifty cents for each offence: And,

13. To apply such penalties, when recovered, in such manner as they may think most conducive to the interests of such town.

2 R. L., 126, § 1; 132, § 15; 131, § 12; 135, § 24; 1 R. L., 287, § 23; Laws of 1819, 190; 1820; 275; 1823, 400, 207; 8 B., 645, 7 B., 299; 4 B., 56; 5 D., 255; 1 D., 510; 19 J. B., 191; 12 J. R., 433; 2 J. C. R., 320.

Additional power.

§ 6. In addition to the powers above specified, the electors of each town, bound to support its own poor, shall have power, at their annual town-meeting, to direct such sum to be raised in such town for the support of the poor for the ensuing year, as they may deem necessary. And every town may raise any money that may be necessary, to defray any charges that may exist against the overseers of the poor of such town.

1 R. L., 287, § 23; Laws of 1824, 382.

Special town meetings.

§ 7. Special town-meetings shall be held to supply vacancies in the several cases hereinafter provided. They shall also be held whenever twelve or more persons eligible to the office of supervisor of the town shall, by application in writing, signed by them, and addressed to the town clerk, require a special town-meeting to be called, for the purpose of raising monies for the support of common schools, or of the poor, when a proposition to that effect shall not have been acted upon at the annual town-meeting; or for the purpose of deliberating in regard to the institution or defence of suits, or the raising of monies therefor: and no special town-meeting shall have power to act on any subjects, other than such as are specified in this section.

2 R. L., 126, § 1 & 16; 7 W., 488.

Notices

§ 8. No previous notice need be given of the annual town-meetings; but the town clerk shall, at least eight days before the holding of any special town-meeting, cause notices thereof, under his hand, to be posted at four or more of the most public places in the town; which notices shall specify the time, place and purposes of such meeting.

§ 9. Every order or direction, and all rules and regulations, made by any town-meeting, shall remain in force, until the same shall be altered or repealed at some subsequent town-meeting.

2 R. L., 131, § 12.

§ 10. Whenever a town-meeting shall be held in any town, no civil process shall be served in such town on any elector entitled to vote therein, on any day during which such town-meeting shall be held. Civil process.

See Laws of 1839, ch. 589; 1845, ch. 180; 1847, chaps. 455, 460; 1851, ch. 134.

ARTICLE SECOND.

OF THE MODE OF CONDUCTING TOWN-MEETINGS.

Sec. 11. Justices of the peace to preside at town-meetings.

12. They have power to preserve order.

13. If justice be absent, presiding officer to be chosen.

14. Town clerk to be clerk of the meeting; his duties.

15. If town clerk be absent, person to be chosen to act as clerk.

16. Town-meetings to be kept open in day time only; may be held for two days.

17. All questions to be decided by majority.

18. Proceedings in case any person shall be challenged.

19. Minutes of proceedings to be filed with town clerk.

§ 11. It shall be the duty of the justices of the peace of each town, to attend every town-meeting held therein; and such of them as shall be present, shall preside at such meeting, and shall see that the same is orderly and regularly conducted. Justices to preside.

2 R. L., 131, § 2.

§ 12. The officers so presiding shall have the like authority to preserve order, to enforce obedience, and to commit for disorderly conduct, as is possessed by the board of inspectors at a general election. Power to preserve order.

17 W., 523.

§ 13. If there be no justice of the peace present at such meeting, then such person as shall be chosen for that purpose by the electors present, shall preside, and shall possess the like powers as the justices. Presiding officer if justice absent.

§ 14. The town clerk last before elected or appointed, shall be the clerk of the town-meeting, and shall keep faithful minutes of its proceedings; in which he shall enter, at length, every order or direction, and all rules and regulations, made by such meeting. Clerk of meeting

§ 15. If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present, shall act as clerk of the meeting.

§ 16. Town-meetings shall be kept open in the day-time only, between the rising and setting of the sun; and if necessary, may be held two days successively, but no longer. Meeting how long kept open.

2 R. L., 131, § 4; 5 N. Y., 23; 8 Cow., 289.

§ 17. All questions, upon motions made, at town-meetings, shall be determined by the majority of the electors voting; Majority to decide, &c.

TITLE 1.

whether commons, or otherwise; for maintaining and amending partition or other fences around the same, or any part thereof, and circular fences for their lands, gardens, orchards and meadows; for protecting such lands from any trespass, and for directing the time and manner of using the same:

11. To make the like rules and regulations for ascertaining the sufficiency of all fences in such town; for determining the times and manner in which cattle, horses, or sheep, shall be permitted to go at large on highways; and for impounding animals:

12. To impose such penalties on persons offending against any rule or regulation established by such town, excepting such as relate to the keeping and maintaining of fences, as they may think proper; not exceeding twelve dollars and fifty cents for each offence: And,

13. To apply such penalties, when recovered, in such manner as they may think most conducive to the interests of such town.

2 R. L., 126, § 1; 132, § 15; 181, § 12; 135, § 24; 1 R. L., 287, § 23; Laws of 1818, 190; 1820; 176; 1823, 400, 207; 8 B., 645, 7 B., 299; 4 B., 56; 5 D., 255; 1 D., 510; 19 J. R., 191; 12 J. R., 433; 2 J. C. R., 320.

Additional power.

§ 6. In addition to the powers above specified, the electors of each town, bound to support its own poor, shall have power, at their annual town-meeting, to direct such sum to be raised in such town for the support of the poor for the ensuing year, as they may deem necessary. And every town may raise any money that may be necessary, to defray any charges that may exist against the overseers of the poor of such town.

1 R. L., 287, § 23; Laws of 1824, 382.

Special town meetings.

§ 7. Special town-meetings shall be held to supply vacancies in the several cases hereinafter provided. They shall also be held whenever twelve or more persons eligible to the office of supervisor of the town shall, by application in writing, signed by them, and addressed to the town clerk, require a special town-meeting to be called, for the purpose of raising monies for the support of common schools, or of the poor, when a proposition to that effect shall not have been acted upon at the annual town-meeting; or for the purpose of deliberating in regard to the institution or defence of suits, or the raising of monies therefor: and no special town-meeting shall have power to act on any subjects, other than such as are specified in this section.

2 R. L., 126, § 1 & 16; 7 W., 488.

Notices

§ 8. No previous notice need be given of the annual town-meetings; but the town clerk shall, at least eight days before the holding of any special town-meeting, cause notices thereof, under his hand, to be posted at four or more of the most public places in the town; which notices shall specify the time, place and purposes of such meeting.

§ 9. Every order or direction, and all rules and regulations, made by any town-meeting, shall remain in force, until the same shall be altered or repealed at some subsequent town-meeting.

2 R. L., 131, § 12.

§ 10. Whenever a town-meeting shall be held in any town, no civil process shall be served in such town on any elector entitled to vote therein, on any day during which such town-meeting shall be held.

Civil process.

See Laws of 1839, ch. 389; 1845, ch. 180; 1847, chaps. 455, 480; 1851, ch. 134.

ARTICLE SECOND.

OF THE MODE OF CONDUCTING TOWN-MEETINGS.

Sec. 11. Justices of the peace to preside at town-meetings.

12. They have power to preserve order.

13. If justice be absent, presiding officer to be chosen.

14. Town clerk to be clerk of the meeting; his duties.

15. If town clerk be absent, person to be chosen to act as clerk.

16. Town-meetings to be kept open in day time only; may be held for two days.

17. All questions to be decided by majority.

18. Proceedings in case any person shall be challenged.

19. Minutes of proceedings to be filed with town clerk.

§ 11. It shall be the duty of the justices of the peace of each town, to attend every town-meeting held therein; and such of them as shall be present, shall preside at such meeting, and shall see that the same is orderly and regularly conducted.

Justices to preside.

2 R. L., 131, § 2.

§ 12. The officers so presiding shall have the like authority to preserve order, to enforce obedience, and to commit for disorderly conduct, as is possessed by the board of inspectors at a general election.

Power to preserve order.

17 W., 523.

§ 13. If there be no justice of the peace present at such meeting, then such person as shall be chosen for that purpose by the electors present, shall preside, and shall possess the like powers as the justices.

Presiding officer if justice absent.

§ 14. The town clerk last before elected or appointed, shall be the clerk of the town-meeting, and shall keep faithful minutes of its proceedings; in which he shall enter, at length, every order or direction, and all rules and regulations, made by such meeting.

Clerk of meeting

§ 15. If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present, shall act as clerk of the meeting.

§ 16. Town-meetings shall be kept open in the day-time only, between the rising and setting of the sun; and if necessary, may be held two days successively, but no longer.

Meeting how long kept open.

2 R. L., 131, § 4; 5 N. Y., 23; 8 Cow., 289.

§ 17. All questions, upon motions made, at town-meetings, shall be determined by the majority of the electors voting;

Majority to decide, &c.

TITLE I.

and the officers presiding at such meeting, shall ascertain and declare the result of the votes upon each question.

2 R. L., 131, § 1 & 2; 5 N. Y., 23.

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Challenges.

§ 18. If any person offering to vote at any election, or upon any question, arising at such town-meeting, shall be challenged as unqualified, the presiding officers shall proceed thereupon in the manner prescribed in the fourth Title of the sixth Chapter of this act; and no person whose vote shall have been received upon such challenge, shall be again challenged upon any other question, arising at the same town-meeting.

2 R. L., 126, § 1 and 2.

Minutes of
proceedings

§ 19. The minutes of the proceedings of every town-meeting, subscribed by the clerk of such meeting, and by the officers presiding, shall be filed in the office of the town clerk, within two days after such meeting.

TITLE III.

**OF THE ELECTION AND QUALIFICATIONS OF TOWN OFFICERS,
AND THE TENURE OF THEIR OFFICES.**

ART. 1. — Of the election of town officers.

ART. 2. — Of the qualifications of town officers, and the tenure of their offices.

ART. 3. — Of vacancies in town offices and the mode of supplying them.

ARTICLE FIRST.**OF THE ELECTION OF TOWN OFFICERS.**

- SEC. 1. Proclamation of opening and closing poll, when to be made.
2. Certain town officers to be chosen by ballot.
3. Other officers how to be chosen.
4. All persons voted for to be named in one ballot; its contents, &c.
5. When election is by ballot, poll lists to be kept.
6. Ballots to be deposited in a box.
7. Canvass of votes, how to be conducted.
8. Before ballots are opened, they are to be counted and compared.
9. Statement of the result, to be made and read; reading to be deemed notice of election in certain cases.
10. In what cases clerk to transmit notice of election.

Proclama-
tions.

§ 1. Before the electors shall proceed to elect any town officer, proclamation shall be made of the opening of the poll, and proclamation shall in like manner be made, of each adjournment, and of the opening and closing of the poll, until the election be ended.

Mode of
choice.

§ 2. The supervisor, town clerk, assessors, collector, overseers of the poor, commissioners of highways, commissioners and inspectors of common schools, and constables, shall be chosen by ballot.

2 R. L., 125, § 1; Laws of 1819, 190, § 9.

§ 3. All other town officers shall be chosen either

1. By ballot,
2. By ayes and noes, or

3. By the rising, or the dividing of the electors ;
As the meeting may determine.

§ 4. When the electors vote by ballot, all the officers voted for shall be named in one ballot, which shall contain written or printed, or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be chosen, and shall be delivered to the presiding officers so folded as to conceal the contents. [344]
Contents of
ballot.

§ 5. When the election is by ballot, a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote shall be received. Poll list.

§ 6. When the election is by ballot, the presiding officers shall deposit the ballots in a box to be constructed, kept, and disposed of, as near as may be, in the manner prescribed in the fourth Title of Chapter six of this act. Box.

§ 7. At the close of every election by ballot, the presiding officers shall proceed publicly to canvass the votes ; which canvass, when commenced, shall be continued without adjournment or interruption, until the same be completed. Canvass.

§ 8. Before the ballots are opened, they shall be counted and compared with the poll list, and the like proceedings shall be had as to ballots folded together, and as to differences in number, as are prescribed in the fourth Title of the sixth Chapter of this act. Ib.

§ 9. The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting, in the minutes of its proceedings to be kept by him as before required, which shall be publicly read by him to the meeting ; and such reading shall be deemed notice of the result of such election, to every person whose name shall have been entered on the poll list as a voter. Ib. state-
ment of
result.

11 How. P. R., 418.

§ 10. The clerk of every town-meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose name shall not have been entered on the poll list as a voter, a notice of his election. Notice to
persons
elected.

See Laws of 1829, ch. 356 ; 1830, ch. 289, 290 ; 1833, ch. 270 ; 1839, ch. 389 ; 1842, ch. 130.

ARTICLE SECOND.

OF THE QUALIFICATIONS OF TOWN OFFICERS, AND THE TENURE OF THEIR OFFICES.

SMC. 11. Must be an elector of the town.

12. Loan officers ineligible to the office of supervisor.

13, 14 & 15. Oath of office to be taken and filed.

16. Neglect to take and file certificate of oath, a refusal to serve.

17. Certain officers to give notice of their acceptance.

18. Neglect to give such notice a refusal to serve.

19 & 20. Collector to give bond to be filed and its effect.

21. Constables to take oath of office, and to give security.

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22. Sureties how to be approved of. Certified copy evidence.

23. Suits against constables and sureties, to be brought within two years.

TITLE 2.

- SEC. 24. Collector or constable neglecting, &c., a refusal to serve.
 25 & 26. Penalties for refusing to serve.
 27. Quakers not liable to penalty for not serving as assessors.
 28. Affirmation to be made and filed by them.
 29. Penalty for acting without taking oath of office.
 30. Town officers to hold for one year, and until successors have qualified.

Who
eligible.

§ 11. No person shall be eligible to any town office, unless he shall be an elector of the town for which he shall be chosen.

2 R. L., 125, § 1; 2 R. L., 129, § 7; Laws of 1821, 120; 1823, 207, § 4.

Loan officer

§ 12. No loan officer, appointed under the act of the 14th of March, 1792, entitled, "An act for loaning monies belonging to this state," shall during his continuance in that office, be eligible to the office of supervisor.

See Laws of 1850, ch. 337.

Oath of
office.

§ 13. Every person chosen or appointed to the office of supervisor, town clerk, assessor, overseer of the poor, commissioner of highways, or town sealer, before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe before some justice of the peace, or commissioner of deeds, the oath of office prescribed in the sixth Article of the constitution of this state.

See Laws of 1838, ch. 172.

Id.

§ 14. Such oath shall be administered without reward, and the justice or commissioner, before whom the same shall be taken, shall also without reward, certify in writing the day and year when the same was taken, and shall deliver such certificate to the person by whom the oath was made.

Id.

§ 15. Such person within eight days thereafter, shall cause the certificate to be filed in the office of the town clerk.

Neglect to
take oath.

§ 16. If any person chosen or appointed to either of the town offices above enumerated, shall not take and subscribe such oath, and cause the certificate thereof to be filed as above required, such neglect shall be deemed a refusal to serve.

Notice of
acceptance.

§ 17. Every person chosen or appointed to the office of overseer of highways, or commissioner or inspector of common schools, or pound-master, before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, shall cause to be filed in the office of the town clerk, a notice in writing signifying his acceptance of such office.

Laws of 1821, 120, § 1 & 3.

Neglect to
file notice
of accept-
ance.

§ 18. If any person chosen or appointed to either of the offices named in the last section, shall not cause such notice to be filed, such neglect shall be deemed a refusal to serve.

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Collector to
give bond.

§ 19. Every person chosen or appointed to the office of collector, before he enters on the duties of his office, and within eight days after he receives notice of the amount of the taxes to be collected by him, shall execute to the super-

visor of the town and lodge with him, a bond with one or more sureties, to be approved of by such supervisor, in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector.

2 R. L., 126, § 1; Laws of 1823, 400, § 26; 1 D., 233.

§ 20. The supervisor shall within six days thereafter, file such bond, with his approbation endorsed thereon, in the office of the county clerk, who shall make an entry thereof, in a book to be provided for the purpose, in the same manner in which judgments are entered of record; and every such bond shall be a lien on all the real estate held jointly or severally by the collector or his sureties, within the county, at the time of the filing thereof; and shall continue to be such lien, till its condition, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied.

1 Cow., 670.

§ 21. Every person chosen or appointed to the office of constable, before he enters on the duties of his office, and within eight days after he shall be notified of his election or appointment, shall take and subscribe the oath of office prescribed by the constitution, and shall execute, in the presence of the supervisor or town clerk of the town, with one or more sureties, to be approved of by such supervisor or town clerk, an instrument in writing, by which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any execution which shall be delivered to him for collection.

Collector to give bond.

Constable to take oath and give security.

2 R. L., 126, § 1; 7 H., 36; 12 W., 307; 10 W., 372; 9 W., 235; 5 W., 191; 4 W., 414; 2 W., 282, 615; 2 Ab., 188.

§ 22. The supervisor or town clerk shall endorse on such instrument, his approbation of the sureties therein named, and shall then cause the same to be filed in the office of the town clerk; and a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts, of the execution thereof by such constable and his sureties.

§ 23. All actions against a constable or his sureties, upon any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein shall have been elected.

Ib. Limitation of suits thereon.

2 R. L., 137.

§ 24. If any person chosen or appointed to the office of collector or constable, shall not give such security and take such oath, as is above required, within the time limited for that purpose, such neglect shall be deemed a refusal to serve.

Refusal to serve.

2 R. L., 129, § 7.

§ 25. If any person chosen or appointed to the office of supervisor, town clerk, assessor, commissioner of highways, or overseer of the poor, shall refuse to serve, he shall forfeit to the town the sum of fifty dollars.

[347] Penalties therefor.

TITLE 2.
Penalties
therefor.

§ 26. If any person chosen or appointed to the office of commissioner or inspector of common schools, overseer of highways, pound-master, or town sealer, shall refuse to serve, he shall forfeit to the town, the sum of ten dollars.

2 R. L., 129, § 9; 1b., § 10; Laws of 1821, 120, § 1 & 3; 11 J. R., 432.

Quaker
chosen
assessor.

§ 27. No quaker or reputed quaker, chosen or appointed to the office of assessor, shall be liable to such penalty, if he shall affirm, within three days after receiving notice of his election or appointment, that he has conscientious scruples about executing the duties of said office.

2 R. L., 129, § 9 & 10.

1b.

§ 28. Such affirmation shall be made before some one of the justices of the town, who shall, without reward, certify in writing, the day and year when the same was taken, and deliver such certificate to the person by whom such affirmation was made, and such person, within eight days thereafter, shall cause said certificate to be filed in the office of the town clerk.

Penalty for
acting with-
out oath.

§ 29. If any town officer who is required by law to take the oath of office, shall enter upon the duties of his office, before he shall have taken such oath, he shall forfeit to the town the sum of fifty dollars.

2 R. L., 129, § 9 & 10.

Tenure of
office

§ 30. Town officers shall hold their offices for one year, and until others are chosen or appointed in their places, and have qualified.

2 R. L., 125, § 1. See Laws of 1838, chaps. 58, 172; 1843, ch. 133; 1845, ch. 180.

ARTICLE THIRD.

OF VACANCIES IN TOWN OFFICES AND THE MODE OF SUPPLYING THEM.

Sec. 31. Where town neglects to choose, justices may appoint by warrant.

32. Warrant to be filed with town clerk: notice to be given.

33. Justices may accept the resignations of town officers.

34. In case of certain vacancies, special town meeting to be called.

35. If vacancy be not supplied within fifteen days, justices may appoint.

36. Vacancies in certain offices, how supplied.

37. When justices of adjoining towns may act.

If town
neglect to
choose,
justices to
appoint.

§ 31. If any town shall neglect, at its annual town meeting, to choose its proper town officers, or either of them, it shall be lawful for any three justices of the peace of the said town, by warrant under their hands and seals, to appoint such officers; and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same powers and be subject to the same duties and penalties, as if they had been duly chosen by the electors.

2 R. L., 127, § 5; 5 D., 413; 18 W., 515; 16 J. R., 49.

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Appoint-
ment where
filed, &c.

§ 32. The justices making such appointment, shall cause such warrant to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed.

Resigna-
tion of

§ 33. Any three justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any

town officer of their town; and whenever they shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town.

§ 34. If any person chosen or appointed to the office of supervisor, assessor, commissioner of highways, or overseer of the poor, shall refuse to serve, or shall die or resign, or remove out of the town, or become incapable of serving before the next annual town meeting after he shall have been chosen or appointed, the town clerk shall, within eight days after the happening of such vacancy, call a special town meeting for the purpose of supplying the same.

ART. 2.
town officers.

Special town-meeting to supply vacancies.

2 R. L., 127, § 5; 2 H., 372; 18 W., 515; Laws of 1830, ch. 320, § 2.

§ 35. If the electors shall not, within fifteen days after the happening of such vacancy, supply the same by an election at town meeting, the same shall be supplied by the justices of the town, in the like manner and with the like effect as above provided.

Ib. when justices to appoint.

18 W., 515.

§ 36. Vacancies in all town offices, except the office of supervisor, assessor, commissioner of highways, overseer of the poor, collector, or overseer of highways, shall be supplied by the justices of the town, in the manner provided in the thirty-first section of this Title. Vacancies in the office of collector shall be supplied in the manner prescribed in Chapter thirteen, and vacancies in the office of overseer of highways, in the manner prescribed in Chapter sixteen of this act.

Other vacancies.

18 W., 515; 8 How. P. R., 363.

§ 37. Whenever a vacancy shall occur in any town office, which justices of the peace are authorized to fill, and there shall be less than three justices residing in the town in which such vacancy shall occur, the justice or justices residing in such town may associate with themselves one or more justices of the peace from any adjoining town as may be necessary to make the number of three; and such three justices shall have the like power to fill such vacancy as if they were respectively justices of the town in which the vacancy occurred.

When justices of adjoining towns may act.

Laws of 1830, ch. 320, § 3.

TITLE IV.

OF THE GENERAL DUTIES OF CERTAIN TOWN OFFICERS, AND OF VARIOUS MATTERS CONNECTED THEREWITH.

ART. 1. — Duties of the supervisor.

ART. 2. — Duties of the town clerk.

ART. 3. — Of strays.

ART. 4. — Of division and other fences.

ART. 5. — Of the board of auditors of town accounts.

ART. 6. — Of the compensation of town officers.

TITLE 4.

ARTICLE FIRST.

DUTIES OF THE SUPERVISOR.

- SEC. 1. To receive and disburse, certain town monies.
 2. To sue for all penalties of \$50 or under, given to his town.
 3. To keep account of monies received and disbursed by him.
 4. To account annually to justices and town clerk.
 5. Certificate of the state of his accounts to be made by them.
 6. To attend meetings of the board of supervisors of his county.
 7. To receive accounts to be laid before board.
 8. To lay before board copies of entries received from town clerk.
 9. To cause survey and map to be made of his town.
 10. To forfeit \$50 if he neglects.

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To receive
and pay
town mo-
nies.

§ 1. The supervisor of each town shall receive and pay over all monies raised therein for defraying town charges, except those raised for the support of highways and bridges, of common schools, and of the poor, where poor monies shall be raised.

2 R. L., 138, § 2; 280, § 31; Laws of 1819, 190, § 6; 1 D., 513.

To sue for
penalties.

§ 2. He shall prosecute in the name of his town, or otherwise, as may be necessary, for all penalties of fifty dollars or under, given by law to such town or for its use, and for which no other officer is specially directed to prosecute.

To keep
accounts.

§ 3. He shall keep a just and true account of the receipt and expenditure of all monies which shall come into his hands by virtue of his office, in a book to be provided for that purpose, at the expense of the town, and to be delivered to his successor in office.

To account.

§ 4. On the Tuesday preceding the annual town-meeting, he shall account with the justices of the peace and town clerk, of the town, for the disbursement of all monies received by him.

ib.

§ 5. At every such accounting, the justices and town clerk shall enter a certificate in the supervisor's book of accounts, showing the state of his accounts at the date of the certificate.

To attend
board of
supervisors

§ 6. The supervisor of each town shall attend the annual meeting of the board of supervisors of the county, and every adjourned or special meeting of such board, of which he shall have notice.

ib.

§ 7. He shall receive all accounts which may be presented to him against the town, and shall lay them before the board of supervisors, at their next meeting.

ib.

§ 8. He shall also lay before the board of supervisors such copies of entries concerning monies voted to be raised in his town, as shall be delivered to him by the town clerk.

When to
cause sur-
vey to be
made of
his town.

§ 9. Whenever the supervisor of any town shall be required by the surveyor-general to cause a survey to be made of the bounds of his town, it shall be the duty of such supervisor, within sixty days thereafter, to cause such survey to be made, and to transmit by mail, or otherwise, a map and description thereof to the surveyor-general. The expense of such survey and map shall be defrayed by the several towns, whose bounds

either wholly or in part shall be described thereby; such expense to be apportioned by the board of supervisors of the county.

2 R. L., 136, § 31; 1 R. L., 493, § 3 & 4.

§ 10. If any supervisor shall refuse or neglect to perform the duties enjoined in the last preceding section, he shall forfeit the sum of fifty dollars. [350]
Penalty for neglect.

2 R. L., 136, § 31; 1 R. L., 493, § 3 & 4.

ARTICLE SECOND.

DUTIES OF THE TOWN CLERK.

- Sec. 11. To keep records, books and papers of town, and to file papers.
 12. To record minutes of the proceedings of town-meetings.
 13. To deliver certified copies of entries to supervisor.
 14. To return to county clerk, names of constables elected in his town.
 15. Penalty for neglect to make such return.
 16. Copies of papers, and transcripts to be evidence.

§ 11. The town clerk of each town in this state, shall have the custody of all the records, books and papers of the town; and he shall duly file all certificates of oaths, and other papers required by law to be filed in his office. To have
custody of
books and
papers, &c.

§ 12. He shall transcribe, in the book of records of his town, the minutes of the proceedings of every town-meeting held therein; and he shall enter in such book every order or direction, and all rules and regulations, made by any such town-meeting. Minutes,
&c.

2 R. L., 131, § 12.

§ 13. He shall deliver to the supervisor, before the annual meeting of the board of supervisors of the county, in each year, certified copies of all entries of votes for raising money, made since the last meeting of the board of supervisors, and recorded in the town book. Copies of
entries.

1 R. L., 287, § 23.

§ 14. The town clerks, immediately after the qualifying of any constables chosen or appointed, in their respective towns, shall return to the clerks of their respective counties, the names of such constables. Names of
constables.

2 R. L., 128, § 8; Laws of 1819, 31.

§ 15. If any town clerk shall wilfully omit to make such return, such omission is hereby declared to be a misdemeanor: and on conviction thereof, the person offending shall be adjudged to pay a fine not exceeding ten dollars. Penalty.

§ 16. Copies of all papers duly filed in the office of the town clerk, including those filed with him as clerk of the commissioners of common schools, and transcripts from the book of records, certified by him, shall be evidence, in all courts, in like manner as if the originals were produced. Certified
copies of
papers evi-
dence.

14 B., 288.

TITLE 4
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ARTICLE FOURTH.*

OF DIVISION AND OTHER FENCES.

- SBC. 30. Owners of adjoining land to make and maintain division fences, unless, &c.
31. Person who shall have chosen to let his land lie open, if he afterwards enclose it, to refund or build his proportion.
32. Proportion to be paid or built by him how ascertained.
33. Disputes concerning division fences, to be settled by fence-viewers.
34. Manner in which fence-viewers are to be selected.
35. Fence-viewers to examine premises, &c.
36. Decision of fence-viewers to be filed.
37. Damages, to be appraised by fence-viewers, and recovered.
38. In case of continued neglect, fence may be made or repaired by the party injured.
39. When division fence may be removed.
40. Party removing such fence without permission, liable for damages.
41. Division fence destroyed, how repaired.
42. Party refusing or neglecting to make such reparation, liable for damages.
43. Witnesses may be examined before fence-viewers.
44. Persons who neglect to keep a regular fence, not to recover damages.
45. Fence presumed to be sufficient, until contrary be shewn.

Division
fence to be
maintained.

§ 30. Where two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, except the owner or owners of either of the adjoining lands shall choose to let such land lie open to a public common.

22 B., 579; 18 B., 400; 11 B., 412; 9 How. P. R., 455; 17 W., 320;
Laws of 1860, ch. 267.

Ib. When
land shall
have laid
open.

§ 31. Where a person shall have chosen to let his land lie open, if he shall afterwards enclose it, he shall refund to the owner of the adjoining land, a just proportion of the value at that time, of any division fence that shall have been made by such adjoining owner; or he shall build his proportion of such division fence.

Ib.

§ 32. The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be built by him, in case of his enclosing his land, shall be determined by any two of the fence-viewers of the town.

Disputes
how settled.

§ 33. If dispute arises between the owners of adjoining lands, concerning the proportion or particular part of fence to be maintained or made by either of them, such dispute shall be settled by any two of the fence-viewers of the town.

Laws of 1850, ch. 319; 9 J. R., 136; 4 J. R., 414.

Ib.

§ 34. When any of the above mentioned matters shall be submitted to fence-viewers, each party shall choose one; and if either neglect, after eight days' notice, to make such choice, the other party may select both.

Proceed-
ings of
fence
viewers.

§ 35. The fence-viewers shall examine the premises, and hear the allegations of the parties. In case of their disagreement, they shall select another fence-viewer to act with them,

* See act amendatory Laws of 1838, ch. 261.

and the decision of any two shall be final upon the parties to such dispute, and upon all parties holding under them.

§ 36. The decision of the fence-viewers shall be reduced to writing, shall contain a description of the fence, and of the proportion to be maintained by each, and shall be forthwith filed in the office of the town clerk.

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Proceed-
ings of
fence view-
ers.

§ 37. If any person who is liable to contribute to the erection or reparation of a division fence, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay to the party injured, all such damages as shall accrue thereby, to be ascertained and appraised by any two fence-viewers of the town, and to be recovered, with costs of suit. The appraisement shall be reduced to writing, and signed by the fence-viewers making it.

Neglect to
make or re-
pair fence.

18 W., 213; 11 W., 46; 3 H., 38. See Laws of 1838, ch. 261.

§ 38. If such neglect or refusal shall be continued for the period of one month after request in writing, to make or repair such fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him, with costs of suit.

Id.

§ 39. If any person who shall have made his proportion of a division fence, shall be disposed to remove his fence, and suffer his lands to lie open, he may, at any time between the first day of November, in any year, and the first day of April following, but at no other time, give ten days' notice to the owner or occupant of the adjoining land, of his intention to apply to the fence-viewers of the town, for permission to remove his fence; and if at the time specified in such notice, any two of such fence-viewers, to be selected as aforesaid, shall determine that such fence may with propriety be removed, he may then remove the same.

When
fence may
be removed.

11 W., 46; 3 W., 142.

§ 40. If any such fence shall be removed without such notice and permission, the party removing the same, shall pay to the party injured, all such damages as he may sustain thereby, to be recovered, with costs of suit.

Id.

§ 41. Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereunto required by any person interested therein. Such requisition shall be in writing, and signed by the party making it.

Fence de-
stroyed by
accident to-
be repaired.

§ 42. If such person shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same, at the expense of the party so refusing or neglecting, to be recovered from him, with costs of suit.

Id.

§ 43. Witnesses may be examined by the fence-viewers on all questions submitted to them, and either of such fence-

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Powers of
fence view-
ers.

TITLE 4.

In certain cases damages not to be recovered.

viewers shall have power to issue subpoenas for, and to administer oaths to, such witnesses.

§ 44. Whenever the electors of any town shall have made any rule or regulation, prescribing what shall be deemed a sufficient fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation, shall be precluded from recovering compensation in any manner, for damages done by any beast lawfully going at large on the highways, that may enter on any lands of such person, not fenced in conformity to the said rule or regulation, or for entering through any defective fence.

7 B., 306; 4 B., 56; 5 D., 255.

Sufficiency of fence.

§ 45. When the sufficiency of a fence shall come in question in any suit, it shall be presumed to have been sufficient, until the contrary be established.

Compiled with some variations and additions from 2 R. L., 133, § 17 and 18.

ARTICLE FIFTH.

OF THE BOARD OF AUDITORS OF TOWN ACCOUNTS.

SEC. 46. Supervisor, town clerk and justices to be auditors of certain accounts.

47. Board of auditors to meet on the Tuesday preceding annual town-meeting.

48. Accounts audited to be filed with town clerk, and read at town meeting.

49. Justices and town clerk to audit supervisor's accounts.

Who to constitute board.

[See Ch. 16, Title 1, § 8, and Ch. 30, Title 1, § 48.]

§ 46. In each town, the supervisor and town clerk, together with the justices of the town, or any two of such justices, shall constitute a board of auditors, to examine the accounts of the overseers of the poor, the commissioners of common schools, and the commissioners of highways of such town, for monies received and disbursed by them.

1 R. L., 290, § 28; 2 R. L., 138, § 2; Ib., 280, § 31; Laws of 1819, 196, § 17; Laws of 1860, ch. 58, extends their powers; Laws of 1831, ch. 145, and ch. 276; Laws of 1835, ch. 271, change this system as to certain counties. See Laws of 1840, ch. 305; 6 H., 464.

Board when to meet.

§ 47. The board of auditors of town accounts shall meet for the purpose of examining the same, annually, in each town in this state, on the Tuesday preceding the annual town-meeting to be held in such town.

Laws of 1840, ch. 305; 1844, ch. 228.

Accounts when audited, how disposed of

§ 48. The accounts so audited, shall be delivered, with the certificate of the auditors, to the town clerk, to be by him kept on file, for the inspection of any of the inhabitants of the town. They shall also be produced by the town clerk, at the next annual town-meeting, and shall be there read by him, if the same shall be required by the meeting.

Auditors of supervisor's accounts.

§ 49. The justices of the town, or a majority of them, and the town clerk, shall, on the Tuesday preceding the annual town-meeting, in each year, examine and audit the accounts of the supervisor, for monies received and disbursed by him. The accounts, so audited, shall be filed in the office of the town clerk, as above provided.

See Laws of 1840, ch. 305; 1844, ch. 228; 1845, ch. 130; 1847, ch. 490.

ARTICLE SIXTH.ART. 6.
[356]**OF THE COMPENSATION OF TOWN OFFICERS.**

SEC. 50. Certain officers to receive \$1. 25, and others \$1 per day.

51. Compensation of town clerk to be fixed by board of supervisors.

52. Fees of pound masters.

§ 50. The following town officers shall be entitled to compensation at the following rates, for each day actually and necessarily devoted by them to the service of the town, in the duties of their respective offices:

Daily pay of
assessors,
&c.

1. Assessors and inspectors of elections, and clerks of the poll, one dollar and twenty-five cents a day.

2. Commissioners of highways, and overseers of the poor, one dollar a day.

§ 51. The town clerk shall be entitled to such compensation for his services, including those performed as clerk of the commissioners of common schools, as the board of supervisors of his county shall allow.

Pay of town
clerk.

§ 52. The pound-masters shall be allowed the following fees for their services, to wit: For taking into the pound and discharging therefrom, every horse, ass or mule, and all neat cattle, twelve and a half cents each; for every sheep or lamb, three cents; and for every hog, six cents.

Pound mas-
ters' fees.

As to this Article, see 2 R. L., 134, § 21; Ib. 282, § 35; Laws of 1819, 192, § 11. See Laws of 1843, ch. 133.

TITLE V.**OF LEGAL PROCEEDINGS IN FAVOR OF AND AGAINST TOWNS.**

SEC. 1. Proceedings allowed in controversies with and between towns.

2. Towns to sue or be sued by their names, except, &c.

3. Process to be served on supervisor; his duty.

4. Inhabitants when competent witnesses and jurors.

5. Towns may sue before justices of the peace.

6. For trespasses to town lands, when the amount of damages to be recovered.

7. Partition of town lands, when to be decreed.

8. Costs recoverable; judgments to be a town charge.

§ 1. Whenever any controversy or cause of action shall exist between any towns of this state, or between any town and an individual or corporation, such proceedings shall be had, either at law, or in equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect, as in other suits or proceedings of a similar kind, between individuals and corporations.

Proceed-
ings to try
controvers-
ies be-
tween
towns, &c.

Laws of 1820, 175, § 1 and 2; 8 B., 645; 1 D., 510.

§ 2. In all such suits and proceedings, the town shall sue or be sued by its name, except where town officers shall be authorised by law to sue in their name of office, for the benefit of the town.

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Town how
to sue.

§ 3. In all legal proceedings against towns by name, the first process, and all other proceedings requiring to be served,

Process to
be served
on super-
visor.

TITLE 6.

shall be served on the supervisor of the town; and whenever any such suit or proceeding shall be commenced, it shall be the duty of the supervisor to attend to the defence thereof, and to lay before the electors of the town, at the first town-meeting, a full statement of such suit or proceeding, for their direction in regard to the defence thereof.

Inhabitants when competent witnesses and jurors.

§ 4. On the trial of every action in which a town shall be a party or be interested, the electors and inhabitants of such town shall be competent witnesses and jurors, except that in suits and proceedings by and against towns, no inhabitant of either town shall be a juror.

2 R. L., 132, § 14.

Actions in favor of a town may be brought before a justice.

§ 5. Any action in favor of a town, which, if brought by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such town, in like manner, before any such justice; but no action to recover a penalty given to a town, shall be brought before any of the justices of the peace residing in the town, for the benefit of which the same is prosecuted; but all such actions may be brought before any one of the justices of the peace residing in any other town in the same county.

2 R. L., 131, § 12; 6 H., 59.

Actions for penalties in favor of a town may be brought on town lands. [See ante, p. 341.]

§ 6. Whenever any action shall be brought to recover a penalty, imposed for any trespass committed on the lands of a town, if it shall appear, on the trial thereof, that the actual amount of injury to such town lands, in consequence of such trespass, exceeded the sum of twelve dollars and fifty cents, then the amount of the actual damage, with costs of suit, shall be recovered in such action, instead of any penalty for the same trespass, imposed by the town-meeting; and such recovery shall be a bar to every other suit for the same trespass.

Laws of 1823, 207, § 5.

When court may order partition.

§ 7. Whenever, by any decree or decision in any suit or proceeding, brought to settle any controversy in relation to town commons, or other lands the common property of a town, or for the partition thereof, the rights of any town shall be settled and confirmed, the court in which such proceedings shall be had, may partition such lands, according to the right, as decided and settled.

Laws of 1820, 176, § 2.

Costs. Judgments when a town charge.

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§ 8. In all suits or proceedings prosecuted by or against towns, or by or against town officers in their name of office, costs shall be recoverable as in the like cases between individuals. Judgments recovered against a town, or against town officers in actions prosecuted by or against them in their name of office, shall be a town charge, and when levied and collected, shall be paid to the person to whom the same shall have been adjudged.

6 H., 463.

TITLE VI.

TITLE C

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

- SEC. 1. Pounds to be kept in each town; but town-meeting may discontinue them.
2. What shall be deemed town charges.
 3. Accounts to be presented to the board of supervisors.
 4. Monies to defray town charges, how raised.
 - 5 & 6. Town officers to demand the records, &c., of their predecessors.
 7. Such predecessors to deliver records, and pay over monies.
 8. If officer be dead, demand to be made of his executors or administrators.
 9. Penalty for refusing; delivery is to be compelled.

§ 1. Whenever the inhabitants of any town shall determine, Pounds.
at an annual town-meeting, to erect one or more pounds therein, and wherever a pound shall now be erected in any town, the same shall be kept under the care and direction of such pound-master as shall be chosen or appointed for that purpose. The inhabitants of any town may, at any annual town-meeting, discontinue any pounds therein.

2 R. L., 134, § 21.

§ 2. The following shall be deemed town charges :

Town charges.

1. The compensation of town officers for services rendered for their respective towns ;
2. The contingent expenses necessarily incurred for the use and benefit of the town ;
3. The monies authorised to be raised by the vote of a town-meeting, for any town purpose ; and,
4. Every sum directed by law to be raised for any town purpose.

2 R. L., 137, § 2; Laws of 1819, 192, § 11; 1823, 238; 12 N. Y., 65; 7 W., 488.

§ 3. Accounts for the compensation of town officers, and the contingent expenses of towns, (except for monies received and disbursed which are to be settled by the board of town auditors,) shall be presented to the board of supervisors of the county.

Accounts for town charges.

§ 4. The monies necessary to defray the town charges of each town, shall be levied on the taxable property in such town, in the manner prescribed in the twelfth and thirteenth Chapters of this act.

Monies to defray town charges how raised.

§ 5. Whenever the term of office of any supervisor or town clerk shall expire, and another person shall be elected or appointed to such office, it shall be the duty of such succeeding supervisor or town clerk immediately after he shall have entered on the duties of his office, to demand of his predecessor all the records, books and papers under his control belonging to such office; and whenever the term of office of the commissioners of highways, or of common schools, or of the overseers of the poor of any town shall expire, and another or others shall be elected or appointed, it shall in like manner be the duty of the persons so elected or appointed, to make such demand of their predecessors or predecessor.

Certain town officers to demand records, &c. of their predecessors.

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TITLE 7.
Certain town officers to demand records, &c., of their predecessors.

Persons going out of office to deliver over records, &c.

In case of death, demand to be made of executors, &c.

Penalty for refusing to deliver records, &c.

Proceedings to compel delivery [See ante, p. 134.]

§ 6. Whenever either of the officers above named, shall resign, and another person shall be elected or appointed in his stead, the person so elected or appointed shall make such demand of the person so resigning.

§ 7. It shall be the duty of every person so going out of office, whenever thereto required pursuant to the foregoing provisions, to deliver upon oath all the records, books and papers in his possession, or under his control, belonging to the office held by him; which oath may be administered by the officer to whom such delivery shall be made. It shall also be the duty of every supervisor, commissioner of highways, or of common schools, and of every overseer of the poor, so going out of office, at the same time to pay over to such successor the balance of monies remaining in his hands, as ascertained by the auditors of town accounts.

§ 8. Upon the death of any of the officers above enumerated, the successors or successor of such officer shall make such demand as above provided, of the executors or administrators of such deceased officer; and it shall be the duty of such executors or administrators to deliver upon the like oath all records, books and papers in their possession, or under their control, belonging to the office held by their testator or intestate.

§ 9. If any person so going out of office, or his executors or administrators, shall refuse or neglect, when thereunto lawfully required, to deliver such records, books or papers, he shall forfeit to the town for every such refusal or neglect, the sum of two hundred and fifty dollars; and it shall also be the duty of the officer or officers entitled to demand such records, books and papers, to proceed to compel the delivery thereof in the manner prescribed in the sixth Title of the fifth Chapter of this act, and to that end the fiftieth, fifty-first, fifty-second, fifty-third, fifty-fourth and fifty-fifth sections of that Title, shall be deemed to apply to the officers above enumerated, and their executors or administrators.

See Laws of 1832, ch. 222; 1845, ch. 244; 1843, ch. 57.

TITLE VII.

LOCAL AND SPECIAL PROVISIONS.

- Sec. 1. Title to lots used as burying grounds, vested in towns.
2. Trustees in Huntington, Brookhaven, Rochester and Marblatown, to be elected.
3. Trustees in the town of Westchester to be chosen; their powers.
4. Overseers of highways in Suffolk, Queens, Kings, and Richmond.
5. Towns in certain counties may provide for destruction of noxious weeds.
6. Electors of Kingston to elect overseer of Kingston bridge.
7. Towns in certain counties may allow bounties for destruction of wolves, &c.
8. Who entitled to reward, and proof required.
9. Electors of Fort-Ann may raise money for like purpose.
10. Electors of Dresden may raise money for same purpose.
11. Towns having gospel and school lots to choose trustees.
12. Town of La Fayette to elect trustees.
- 13 & 14. Powers and duties of such trustees.
15. Town of Jamaica to direct the purposes to which certain funds shall be applied.

SEC. 16. Towns in Kings, Queens and Richmond, to elect measurers of ashes, &c.

17. Towns in Essex and Clinton may elect measurers of charcoal.

18. Town of Oysterbay to regulate disposition of their common lands.

19. If the electors determine to lease such lands, then two persons to be chosen, &c.

20. Rents to be collected by supervisor.

21. Manner in which such rents shall be applied.

§ 1. The title to every lot or piece of land, which shall have been used by the inhabitants of any town in this state, as a cemetery or burying ground, for the space of fourteen years, next, and immediately before this Title shall take effect, shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the electors in town-meeting.

Title to
burying
grounds.

Laws of 1828, 47.

§ 2. The trustees of the towns of Huntington and Brookhaven, in the county of Suffolk, and of Rochester and Marbletown in the county of Ulster, shall be chosen by the electors of those towns respectively, at their annual town-meetings.

Trustees of
Huntington
&c.

2 R. L., 135, § 27.

§ 3. The electors of the town of Westchester, in the county of Westchester, may, at their annual town-meeting, and in the usual manner of electing town officers, choose six freeholders, resident in the town, for trustees; and such trustees, or a majority of them, shall and may order and dispose of all or any part of the undivided lands in the town of Westchester, as fully to every purpose as trustees have been used to do, under any patent or charter to the said town. They may also continue to lease out the right and privilege of setting and keeping a ferry across the East river, from the town of Westchester to the town of Flushing in Queens county, in like manner, at the same rates of ferriage, under the same rules and regulations, and for like purposes as they have lawfully been accustomed to do, since the eighteenth day of April, one thousand seven hundred and eighty-five.

Trustees of
Westches-
ter.

2 R. L., 135, § 28.

§ 4. The electors of the several towns in the counties of Suffolk, Queens, Kings, and Richmond, may choose as many overseers of highways as they shall deem necessary.

Overseers
of highways
in Suffolk,
&c.

2 R. L., 125, § 1

§ 5. The electors of the several towns in the counties of Columbia, Albany, Essex, Clinton, Franklin and Seneca, may, at their annual town-meetings, or at any special town-meeting which shall be called for the purpose, make provision for destroying noxious weeds on the lands of any person residing in said towns, at the exclusive expense of such persons.

Noxious
weeds.

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2 R. L., 135, § 26.

§ 6. The electors of the town of Kingston, in the county of Ulster, shall annually, at their annual town-meetings, choose some suitable person, being a freeholder, and inhabi-

Overseer of
Kingston
bridge.

CHAP. 12.
Measurers
in Essex
and Clinton

§ 17. The electors of the several towns of the counties of Essex and Clinton, at their annual town-meetings, may elect as many measurers as they may deem necessary, for the purpose of measuring charcoal; and they may divide their several towns into as many districts as they may deem proper, and assign a measurer to each district.

Laws of 1822, 142.

Oysterbay,
Queens
county.

§ 18. It shall be lawful for the freeholders and inhabitants of the town of Oysterbay, in the county of Queens, from time to time, at their annual town-meeting, and not at any other town-meeting, to determine whether they will lease, or otherwise regulate their common lands, beaches and marshes, of said town, or any part or parcel thereof, for any term not exceeding one year at any one time.

Laws of 1822, 72.

1b. § 19. If they shall determine to lease all or any part of their common lands, beaches or marshes, by a majority of votes so given at such town-meeting, then they shall elect two of the freeholders of said town, who, with the supervisor thereof, shall lease the said common lands, beaches and marshes, and cause the determination of the town-meeting to be carried into full effect: but no part of the said common lands, beaches or marshes, shall be leased as aforesaid to any person or persons, not being a freeholder or inhabitant of the said town of Oysterbay.

1b. § 20. The rents to be made payable for such premises, shall be made payable to the supervisor of the said town of Oysterbay, and his successor in office; and if default be made in the payment thereof, the said supervisor, or his successor in office, shall have power in his name of office, to sue for and recover the same.

1b. § 21. Within thirty days after receiving any money so paid or recovered, the supervisor receiving the same shall pay over one half thereof to the overseers of the poor of said town, to be applied to the support of the poor of the town, and the remaining half thereof to the commissioners of common schools of the said town, to be applied for the benefit of common schools of the said town, in like proportion as the money derived from the common school fund of this state is applied.

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CHAP. XII.

Of the Powers, Duties and Privileges of Counties, and of certain County Officers.

(Took effect January 1, 1880.)

TITLE 1. — Of counties as bodies corporate.

TITLE 2. — Of certain duties of county officers, and of various matters connected therewith.

TITLE 3. — Of legal proceedings in favor of, and against counties.

TITLE 4. — Miscellaneous and special provisions.

TITLE I.

OF COUNTIES AS BODIES CORPORATE.

ART. 1. — Of the powers and rights of counties as bodies corporate.

ART. 2. — Of the effects of a division of a county, on its corporate rights and liabilities.

ARTICLE FIRST.

OF THE POWERS AND RIGHTS OF COUNTIES AS BODIES CORPORATE.

SEC. 1. General powers of a county as a body corporate.

2. Limitation of its corporate powers.

3. Proceedings by or against county, but conveyances in any manner good.

4. Powers of county as a body politic, how to be exercised.

§ 1. Each county as a body corporate, has capacity,

General powers.

1. To sue and be sued in the manner prescribed by law :

2. To purchase and hold lands within its own limits, and for the use of its inhabitants ; subject to the power of the legislature over such limits :

3. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its corporate or administrative powers : And,

4. To make such orders for the disposition, regulation, or use of its corporate property, as may be deemed conducive to the interests of its inhabitants.

§ 2. No county shall possess or exercise any corporate powers, except such as are enumerated in this Chapter ; or shall be specially given by law ; or shall be necessary to the exercise of the powers, so enumerated or given.

Limitation.

§ 3. All acts and proceedings by or against a county in its corporate capacity, shall be in the name of the board of supervisors of such county ; but every conveyance of lands within the limits of such county, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the board of supervisors.

In what name to act.

§ 4. The powers of a county as a body politic, can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

Powers how exercised.

5 D., 517 ; 26 W., 70.

ARTICLE SECOND.

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OF THE EFFECTS OF A DIVISION OF A COUNTY, ON ITS CORPORATE RIGHTS AND LIABILITIES.

SEC. 5. Each county to hold such part of the county lands as shall fall within its limits.

6. Personal property of county to be apportioned, and how.

7. Debts to be apportioned, and how.

§ 5. When a county seised of lands shall be divided into two or more counties, or shall be altered in its limits, by the annexing of a part of its territory, to another county or counties, each county shall become seised to its own use, of such

County lands.

TITLE 2.

Personal
property.

part of said lands as shall be included within its limits, as settled by such division or alteration.

§ 6. When a county possessed of, or entitled to, money, rights and credits, or other personal property, is so divided or altered, such property shall be apportioned between the counties interested therein, by the supervisors and county treasurers thereof, as to them or a majority of them, shall appear to be just and equitable. They shall meet for that purpose, at such time as shall be prescribed by the law making such division or alteration.

Debts.

§ 7. Debts owing by a county so divided or altered, shall be apportioned in the manner prescribed in the preceding section; and each county shall thereafter be charged therewith, according to such apportionment.

TITLE II.

OF CERTAIN DUTIES OF COUNTY OFFICERS, AND OF VARIOUS MATTERS CONNECTED THEREWITH.

ART. 1. — Of the board of supervisors.

ART. 2. — Of the county treasurer.

ART. 3. — Of loan officers and commissioners of loans.

ART. 4. — Of the clerks of counties.

ART. 5. — Of sheriffs and coroners.

ART. 6. — Of surrogates.

ART. 7. — Of district attorneys.

ARTICLE FIRST.

OF THE BOARD OF SUPERVISORS.

SEC. 1. Board of supervisors to meet annually, and where. May also hold special meetings.

2. Place of annual meeting.

3. Time of annual meetings.

4. Powers of board.

5. Majority a quorum, and questions to be decided by a majority present.

6. Meetings to be public.

7. Chairman to be appointed at each annual meeting.

8. Chairman to have power to administer oaths.

9. Clerk to be appointed, and his duties.

10. His compensation.

11. Books, &c., of board, to be deposited with clerk, and to be open to examination.

12. Clerk to designate the amount allowed upon accounts, &c.

13. Supervisors to cause court-houses and jails to be repaired.

[366] 14. To cause solitary cells to be prepared for convicts.

15. Compensation of members of board.

16. Penalty for neglect of duty.

17. Supervisors of New York.

Annual
meeting.

§ 1. The supervisors of the several cities and towns in each of the counties of this state, shall meet annually in their respective counties, for the despatch of business as a board of supervisors. They may also hold special meetings, at such times and places as they may find convenient; and shall have

power to adjourn from time to time, as they may deem necessary.

2 R. L., 137, § 1; Laws of 1823, 397, § 19; 398, § 20; 1825, 330, § 1; 1826, 39, 94, 135, § 4; 12 N. Y., 63; 8 N. Y., 330.

§ 2. In the counties of Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauque, Chenango, Cortland, Delaware, Dutchess, Essex, Genesee, Herkimer, Jefferson, Lewis, Madison, Onondaga, Schenectady, St. Lawrence, Steuben, Tompkins, Ulster, Wayne and Westchester, the boards of supervisors shall hold their annual meetings, at the places provided by law, for the meeting of the board of canvassers of the votes given at the annual election. In all the other counties of the state, the board shall meet at the court-house in each county, if there be but one; at each of said court-houses alternately, if there be two; and if there be no court-house in the county, then at the place where the last court of common pleas shall, or ought to, have been held.

Place of annual meeting.

§ 3. The annual meetings of the boards of supervisors shall be held at the following times:

Time of annual meeting.

1. In the county of Kings on the first Tuesday of August, and in the county of Livingston on the second Monday in November, in each year:

2. In the counties of Oneida and Washington on the third Tuesday of November in each year:

3. In the counties of Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauque, Chenango, Cortland, Delaware, Dutchess, Essex, Franklin, Genesee, Greene, Herkimer, Jefferson, Lewis, Montgomery, Onondaga, Orange, Sullivan, Schenectady, St. Lawrence, Steuben, Tioga, Tompkins, Ulster, Wayne and Westchester, on the Tuesday next after the general election in each year:

4. In the counties of Madison, Orleans, Otsego and Saratoga, on the Monday next after the general election in each year:

5. And in every other county in this state, on the first Tuesday of October in each year.

2 R. L., 137, § 1; Laws of 1823, 397, § 19; 398, § 20; 1824, 17, § 3; 1825, 330, § 1; 1826, 5, 25, 39, 94, 135; 1827, 159, 283; Act of the 15th of March, 1828, ch. 72; Act of March 20th, 1828, ch. 91; Act of March 28th, 1828, ch. 132; 11 N. Y., 574; 23 E., 338; 6 H., 244; 5 D., 521; 9 How. P. R., 470. See Laws of 1849, ch. 194.

§ 4. The board of supervisors of each county in this state, shall have power at their annual meetings, or at any other meeting,

Powers of the board.

1. To make such orders concerning the corporate property of the county, as they may deem expedient: [397]

2. To examine, settle, and allow all accounts chargeable against such county; and to direct the raising of such sums as may be necessary to defray the same:

3. To audit the accounts of town officers and other persons, against their respective towns; and to direct the raising of such sums as may be necessary to defray the same: And,

TITLE 2

4. To perform all other duties which may be enjoined on them by any law of this state.

2 R. L., 137, § 2; 5 D., 517; 3 D., 382; 9 Pal., 182; 6 H., 244; 1 H., 362; 9 W., 508.

Majority to decide.

§ 5. A majority of the supervisors of any county shall constitute a quorum for the transaction of business; and all questions which shall arise at their meetings, shall be determined by the votes of the majority of the supervisors present.

2 R. L., 137, § 7.

Meetings public.

§ 6. The boards of supervisors shall sit with open doors, and all persons may attend their meetings.

Chairman.

§ 7. They shall at each annual meeting, choose one of their number as chairman, who shall preside at such meeting, and in all other meetings held during the year. In case of his absence at any meeting, the members present shall choose one of their number as a temporary chairman.

Laws of 1825, 397, § 1.

May administer oath.

§ 8. Every chairman shall have power to administer an oath to any person, concerning any matter submitted to the board, or connected with their powers or duties.

Clerk to be appointed.

§ 9. Each board of supervisors shall, as often as may be necessary, appoint some proper person to be their clerk, who shall hold his office during their pleasure, and whose general duty it shall be,

1. To record in a book to be provided for the purpose, all the proceedings of the board:

2. To make regular entries of all their resolutions or decisions, on all questions concerning the raising or payment of monies:

3. To record the vote of each supervisor on any question submitted to the board, if required by any member present: and,

4. To preserve and file all accounts acted upon by the board.

2 R. L., 138, § 4; Ib., 140, § 9; Laws of 1820, 223; 5 D., 521.

His compensation.

§ 10. The clerk shall receive a reasonable compensation for his services, to be fixed by the board of supervisors, and to be paid by the county.

Books, &c.

§ 11. The books records and accounts of the boards of supervisors, shall be deposited with their clerk, and shall be open, without reward, to the examination of all persons.

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Accounts to be filed.

§ 12. It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, the amount so audited and allowed, and the charges for which the same was allowed; and he shall also deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person six cents for every folio of one hundred and twenty-eight words contained in such copy.

Laws of 1826, 345, § 2.

Court-

§ 13. It shall be the duty of the several boards of supervi-

sors, as often as shall be necessary, to cause the court-house and jail of their respective counties, to be duly repaired, at the expense of such counties; but the sums expended in such repairs shall not exceed five hundred dollars in any one year.

2 R. L., 140, § 9, 10 & 11.

§ 14. They shall also cause to be prepared within the jails of their respective counties, or elsewhere, at the expense of such counties, so many solitary cells for the reception of convicts who may be sentenced to punishment therein, as the court of common pleas of the county may direct.

ART. 2
houses and
jails.

Solitary
cells.

§ 15. Each member of the board of supervisors shall be allowed a compensation, for his services and expenses in attending the meetings of the board, at the rate of two dollars per day.

Pay of
members.

§ 16. If any supervisor shall refuse or neglect to perform any of the duties which are or shall be required of him by law, as a member of the board of supervisors, he shall, for every such offence, forfeit the sum of two hundred and fifty dollars.

Penalty for
neglect.

3 D., 382; 7 J. R., 63.

§ 17. The mayor, recorder and aldermen of the city of New-York; shall be the supervisors of the city and county of New-York; and all the provisions of this Article shall be construed to extend to them respectively, except where special provisions inconsistent therewith, are or shall be made by law, in relation to the city and county of New York.

New York.

2 R. L., 399, § 150; Laws of 1823, 398, § 20. See Laws of 1849, ch. 194; 1848, ch. 164; 1847, chaps. 455, 490; 1846, ch. 180; 1841, ch. 274; 1839, ch. 369; 1838, ch. 314; 1836, ch. 506.

ARTICLE SECOND.

OF THE COUNTY TREASURER.

SEC. 18. County treasurers to give bonds.

19. Bond to be filed in county clerk's office.

20. County treasurer to receive and pay out monies of county.

21. To keep account of receipts and expenditures.

22. To transmit annually to comptroller, an account of monies belonging to the state.

23. To exhibit his books and accounts to supervisors.

24. To deliver over books, &c., to successor.

25. Penalty for refusing to make such delivery.

26. To retain a commission of one per cent. upon monies received and paid by him.

27. When bond forfeited, supervisors to have it put in suit.

28. Monies recovered in such action, how to be applied.

29. Chamberlain of New-York, county treasurer of that county.

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§ 18. Every person appointed or elected to the office of county treasurer, before he enters on the duties of his office, shall give a bond to the supervisors of the county, with three or more sufficient sureties, to be approved of by the board of supervisors, and in such sum as they shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay according to law, all monies which shall come to his hands as treasurer, and render a just and true account thereof, to the board of supervisors, or to the

Bond.

TITLE 2.

comptroller of this state, when thereunto required. Such bond with the sureties as are herein provided, shall be renewed by such person at any time when, in the opinion of said board or a majority of them, the moneys entrusted to such person as treasurer shall be deemed unsafe or the surety insufficient: and in case said county treasurer shall fail to renew said bond within twenty days after he shall be notified by said board, that he is required to renew such security, such omission shall work a forfeiture of his office, and the same shall become vacant.

9 W., 146; 3 W., 49; 2 R. L., 139, § 5; Laws of 1869, ch. 165.

Bond.

§ 19. Such bond, with the approbation of the board of supervisors, endorsed thereon by their clerk, shall be filed in the office of the county clerk.

Duties of treasurer.

§ 20. It shall be the duty of the county treasurer, to receive all monies belonging to the county, from whatever source they may be derived; and all monies belonging to this state, which by law are directed to be paid to him; and to pay and apply such monies in the manner required by law.

7 H., 583; 2 Cow., 444; 2 R. L., 139, § 4.

Accounts.

§ 21. The county treasurer shall keep a just and true account of the receipts and expenditures of all monies which shall come to his hands, by virtue of his office, in a book or books to be kept for that purpose; which books shall be provided at the expense of the county.

Ib. with comptroller.

§ 22. The county treasurer shall, on or before the first day of March, in each year, transmit to the comptroller of this state, a statement of all monies received by him during the preceding year, for penalties, belonging to the people of this state; and it shall be his duty, at the same time, to pay to the treasurer of this state the amount of such penalties, after deducting his compensation, in the same manner as state taxes are directed to be paid.

Ib. to supervisors.

§ 23. At the annual meeting of the board of supervisors, or at such other time as they shall direct, the county treasurer shall exhibit to them, all his books and accounts, and all vouchers relating to the same, to be audited and allowed.

Books, &c. to be delivered, and monies paid to successor.

§ 24. Upon the death, resignation, or removal from office, of any county treasurer, all the books and papers belonging to his office, and all monies in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of the preceding county treasurer, or in case of his death, upon the oath of his executors or administrators.

2 R. L., 139, § 6.

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Penalty for neglect.**

§ 25. If any such preceding county treasurer, or in case of his death, if his executors or administrators shall refuse or neglect to deliver such books, papers and monies, upon oath, when lawfully demanded, every such person shall forfeit, for the use of the county, the sum of twelve hundred and fifty dollars.

ART. 2.
Commission-
sion.

§ 26. The county treasurer shall be entitled to retain a commission of one per cent. on every dollar which he shall receive and pay; to wit, one half of such commission for receiving, and the other half for paying.

2 R. L., 139, § 9; 4 W., 453.

§ 27. Whenever the condition of the county treasurer's bond shall be forfeited, to the knowledge of the board of supervisors of the county, and whenever such board shall be required so to do by the comptroller, they shall cause such bond to be put in suit.

Bond when
to be sued.

2 R. L., 139, § 5.

§ 28. All monies recovered in any such action, shall be applied by the board of supervisors to the use of the county, unless the same or some part thereof, shall have been received by the county treasurer for the use of the state; in which case, such monies, or such part thereof as shall have been so received, shall be paid by the supervisors to the treasurer of the state.

Disposition
of monies
recovered.

§ 29. The chamberlain of the city and county of New-York shall be considered the county treasurer thereof; and all the provisions of this Article shall be construed to apply to him, except where special provisions inconsistent therewith, are or shall be made by law, in relation to the city and county of New-York.

New York.

2 R. L., 399, § 151; Laws of 1823, 401, § 28. See Laws of 1850, ch. 346; 1849, ch. 162; 1848, ch. 180; 1847, ch. 427.

ARTICLE THIRD.

OF LOAN OFFICERS AND COMMISSIONERS OF LOANS.

SEC. 30. Commissioners of loans and loan officers to give bonds.

31 & 32. Sufficiency of the sureties how to be determined.

33. Supervisors may require additional security.

34. Proceedings in case additional security be not given.

35. Loan officers to receive all monies payable on mortgages under their charge.

36. May require additional security for monies loaned by them.

37. In case of refusal, commissioners may file a bill in chancery.

38. When monies are paid upon any loan, supervisors may inhibit re-lending.

39. If not ordered to contrary, commissioners to re-loan monies: rate of interest.

40. Commissioners to exhibit annually to supervisors, mortgages, &c.

41. Supervisors to examine them, and send certificate of examination to comptroller.

42. Comptroller may put bonds in suit, and to report to governor.

43. Notice of sale of mortgaged premises by commissioners, how given, &c.

44. Proceedings when county loaning money is divided.

45. Certain provisions to extend to all cases of foreclosure by commissioners.

46. Loan officers when to be credited with amount due.

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47. When not to be charged with interest.

48. When loss is sustained by default of loan officers, how such loss raised.

49. If such county be subjected to loss by defect of title, &c., how loss raised.

50. Loan officers to deposit their books in clerk's office of counties.

51. Meaning of term "loan officers."

§ 30. Every person hereafter appointed to the office of loan officer or commissioner of loans, in any county in this state, shall, before he enters on the duties of his office, give a bond

Bond.

TITLE 1

to the people of this state, with two or more sufficient sureties, in a sum equal to the amount of the mortgages then under the charge of the loan officers, or commissioners of loans, as the case may be, of such county, conditioned that such loan officer or commissioner shall well and truly perform the duties of his office pursuant to law, and shall demean himself therein, without favor, malice or partiality.

Sufficiency
of sureties.

§ 31. The board of supervisors of the county, together with one or more of the judges of the county, shall be the judges of the sufficiency of the sureties offered by a loan officer; and the bond of every such loan officer and his sureties, with the approbation of a majority of the supervisors and of such judge or judges, endorsed thereon, shall be filed in the office of the clerk of the county.

Id.

§ 32. The clerk of the county, and any two judges of the county courts, shall, except in the county of New-York, be judges of the sufficiency of the sureties offered by a commissioner of loans; and in the city and county of New-York, the mayor and recorder shall perform that duty. The bond of every commissioner, with the approbation of the proper officers endorsed thereon, shall be transmitted to the comptroller, to be filed in his office.

Additional
security.

§ 33. Whenever the supervisors of any county in this state, shall apprehend that any loan officer or commissioner of loans, or their or either of their sureties, are likely to fail, it shall be their duty to require such loan officer or commissioner, to give such additional security as they may deem reasonable and satisfactory.

Laws of 1819, 37, § 5.

Id.

§ 34. If any such loan officer shall neglect or refuse for the space of ten days, after the receipt of notice, to give such security as required, the supervisors may appoint another loan officer, in his stead; and if a commissioner of loans shall neglect or refuse, for the space above specified, to give such security as may be required, the said supervisors shall report such suspicion, as to the security, and the refusal of the commissioner of loans to comply with their requisition, to the governor, in order to his removal.

21 B., 506.

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Loan officers to receive mortgage monies.

§ 35. It shall be the duty of the loan officers and commissioners of loans, in the several counties, to receive from time to time, all monies which shall become payable for principal and interest, or for either of them, upon the mortgages under their charge, and to keep an account of all monies so received by them.

May require additional security.

§ 36. Whenever the loan officers or commissioners of loans, shall consider it necessary to require additional security, for the purpose of securing the payment of monies loaned by them or their predecessors in office, either on account of the reduction in value of the premises mortgaged, or on account of any substantial defect in the description of such premises

in the original mortgage, they shall have power, and it shall be their duty, to demand such additional security as they shall think requisite, from the mortgagor, his representatives or assigns, and to take the same in like manner as original mortgages are directed to be taken by them; and such additional securities shall be proceeded upon, in case of default in payment, in the same manner as original mortgages.

Laws of 1822, 265, § 1 & 2.

§ 37. In case any mortgagor, his heirs or devisees, who shall be in the actual possession of the mortgaged premises, shall neglect or refuse to give such additional security as may be required by such loan officers or commissioners, for the purpose of supplying any substantial defect in the description of the mortgaged premises; the loan officers or commissioners of loans, may file a bill in the court of chancery, to compel such mortgagor, his heirs or devisees, to supply such defects, in such manner as the chancellor shall deem equitable; and in every such case, the chancellor shall have power to decree costs against the defendant, if, in his opinion, costs ought to be decreed.

Proceedings if security be refused.

§ 38. Whenever any monies shall be paid to any loan officers or commissioners of loans, for the principal of any loan under their charge, the board of supervisors of the county shall have power, by resolution, to inhibit the re-lending of such monies; and in such case, it shall be the duty of the loan officers or commissioners, to pay to the treasurer of this state, the monies so received, within thirty days after the receipt thereof, or if such resolution be made subsequent to such receipt, then within thirty days after notice thereof.

May be inhibited from re-lending.

Laws of 1819, 37 & 38, § 3; 1820, 247, § 7; 1821, 17; 1822, 265, § 3; 1823, 205, § 1.

§ 39. In case no order shall be made to the contrary by the board of supervisors, the loan officers and commissioners shall re-loan all monies received by them, upon the mortgages under their charge, in the manner prescribed in the several acts under which they shall have been appointed, at an interest of seven per cent.

When to re-loan.

Laws of 1815, 61, § 2; 1821, 170, § 2.

§ 40. It shall be the duty of the loan officers and commissioners of loans, to exhibit to the board of supervisors of their respective counties, at each annual meeting of the board, all the mortgages taken by them or their predecessors in office, for monies loaned pursuant to law, together with their books of accounts, minutes and vouchers; in order that the board of supervisors may ascertain whether the monies committed to the charge of such loan officers and commissioners, have been loaned and continued to be kept as loans, according to law.

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To exhibit accounts to supervisors

Laws of 1819, 37, § 2 & 4.

§ 41. It shall be the duty of the board of supervisors to examine such mortgages, accounts and minutes, so to be

Duty of board of supervisors.

TITLE I.

Duty of comptroller when these officers are in default.

Notice of sale of mortgaged premises.

Ib. when county has been divided.

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Certain provisions extended to this Article.

[See ante p. 412.]

annually exhibited to them, and thereupon forthwith to certify under their hands, the state in which they shall find the monies under charge of such loan officers and commissioners, and to transmit their certificate by mail to the comptroller of this state.

§ 42. If it shall appear to the comptroller, from any such certificate, that the whole of the monies under the charge of the loan officers and commissioners have not been loaned as required by law; it shall be his duty to order suits to be commenced on the bonds of the loan officers or commissioners so found in default. And it shall also be his duty, to report such commissioners of loans, or any or either of them, being in default, to the governor, in order that they may be removed, and others appointed in their stead.

§ 43. In every case of a mortgage sale, by loan officers or commissioners of loans, it shall be their duty, in addition to the notice directed by law to be given of such sale, in the several acts under which they are appointed, to cause a copy of their advertisement to be published, for the space of eight weeks successively, immediately preceding the day of sale, at least once in each week, in one of the newspapers printed and published in the county in which the mortgaged premises are situate; or if no newspaper is printed and published in such county, then in the county nearest thereto, in which a newspaper is printed and published: and the expense of such publication shall be paid in like manner as the other expenses of advertising loan office sales, are by law directed and required to be paid.

§ 44. Whenever any county, in which loans may have been made pursuant to either of the acts authorising loans of monies to the citizens of this state, shall have been divided since the passing of the act under which such loans were made, or shall hereafter be divided, and default shall be made in the payment of principal or interest of any such loan, the loan officers or commissioners under whose care any mortgage given for any such loan may be, shall have power to proceed to a sale of the mortgaged premises, pursuant to the provisions of the act under which the mortgage shall have been given, whether the mortgaged premises shall be situated within the county of such loan officers or commissioners, or not. And in such cases, all notices required to be affixed or published, shall be affixed and published in the county in which the mortgaged lands shall lie; and the sale shall be made in that county.

3 Pal., 397.

§ 45. The powers conferred and the duties imposed on the attorney-general, by the fourth, fifth, sixth, seventh and eighth sections of Title sixth of the ninth Chapter of this act, shall extend to loan officers and commissioners of loans, in all cases of foreclosure under their direction, except that the expenses of any appraisement by loan officers shall be charged to the county; and all purchases of mortgaged premises made

by the loan officers, at any mortgage sale, had under their direction, shall be in the name of the board of supervisors, and for the use and benefit of their respective counties; and all purchases of mortgaged premises, made by the commissioners of loans, at any mortgage sale had under their direction, shall be for the use and benefit of the state.

Laws of 1820, 247, § 8; 1824, 341, § 1 to 4.

§ 46. Whenever any mortgaged premises are bid in by loan officers or commissioners of loans, for an amount less than the mortgage money, interest and costs due, it shall be the duty of the comptroller, upon satisfactory proof being made to him, that nothing more can be collected upon any covenant in the mortgage, or upon any bond or other security for the mortgage debt, and that the deficiency has not arisen from any negligence or fault of the loan officers or commissioners, to credit them with the full amount due on the mortgage at the time of sale, upon their delivering to him the original mortgage, and all other securities for the mortgage debt.

Amount to be credited when premises are bid in for less than amount due

1824, 341, § 5; By Laws of 1832, ch. 18. This section is made applicable only to the commissioners of loans and to the loan of 1808.

§ 47. Whenever any monies hereafter to be received by any loan officers or commissioners of loans, shall remain in their hands unloaned, without any fault or negligence on their part, and unemployed, it shall be the duty of the comptroller, on satisfactory proof thereof being made to him, so to state the accounts of such loan officers or commissioners, that they be not charged with interest on such monies, whilst so remaining unloaned and unemployed.

When interest is not to be charged.

By the same act this section is retrospective.

§ 48. Whenever any county to which loans may have been made, pursuant to the act of the 14th of March, 1792, authorizing loans of monies to the citizens of this state, shall be divided, and any loss shall be sustained in consequence of the default of the loan officers appointed or to be appointed pursuant to said act for any such county, the amount of such loss shall be raised, levied and collected, in the several counties or territory, which originally composed the county so divided.

Loss when county has been divided.

Laws of 1820, 246, § 4 & 8.

§ 49. If any such county shall be subjected to any loss or deficiency, in consequence of a defect of title, or of the want of sufficient value of any premises mortgaged to any such loan officers, such loss or deficiency shall be raised, levied and collected, in the county in which the mortgaged premises may be; and the supervisors of such county shall direct the same to be raised, at the first annual meeting that shall be held after the amount of such loss or deficiency shall be certified to them by the commissioners.

[375] B.

§ 50. It shall be the duty of the commissioners of loans and loan officers of the several counties, to deposit their books of mortgages in the clerks' offices of the respective counties for

Books of mortgages where to be deposited.

TITLE 1

which they were appointed, there to remain at all times, except when the said commissioners and officers shall be in actual session, for the despatch of their official duties.

Term "loan officers" defined.

§ 51. The term "loan officers," whenever it occurs in the foregoing sections, shall be construed to intend the loan officers appointed under the act of the 14th March, 1792, entitled "An act for loaning monies belonging to this state," and commonly called New Loan officers.

See act amendatory; Laws of 1832, ch. 118.

ARTICLE FOURTH.

OF THE CLERKS OF COUNTIES.

SEC. 52. County clerk to have care of all books, &c., in his office.

53. To provide books for the recording of conveyances and other papers; to file papers.

54. Where clerks' offices to be kept.

55. Clerk of Suffolk may establish two offices in that county, and appoint an assistant for one of them.

56. Clerks to appoint deputies. Appointment to be recorded.

57. Deputies to take oath of office.

58. When deputy to perform all his duties, except, &c.

59. When office vacant, deputy to perform duties, and receive pay, &c., of clerk.

60. When a commission or supersedeas received, notice to be given.

61. To give notice to governor of any officer neglecting to give bond.

62. To report to governor annually certain matters.

63. Pay of clerk, when paid out of treasury.

64. Clerk to report annually to comptroller, names of all religious societies.

65. Certified copies of papers in clerk's office, like evidence as originals.

66. The competency of sureties when to be decided by two county judges.

General duties.

§ 52. The clerk of each county in this state shall have the custody of all the books, records, deeds, parchments, maps and papers, now deposited, or that may hereafter be deposited or kept in his office; and it shall be his duty, from time to time, carefully to attend to the arrangement and preservation thereof.

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Id.

§ 53. He shall, at the expense of the county, provide proper books for the recording of deeds, mortgages, or other conveyances acknowledged or proved according to law; and for the recording of all other papers, documents or matters required by law to be recorded in his office. He shall also receive and file all papers and documents directed to be filed therein.

Places where offices are to be kept.

§ 54. The clerk of the county of Washington shall keep his office at some convenient place, not more than one half mile from the dwelling-house now or late of Joseph Rouse, in the town of Argyle. The clerk's offices in those counties in which buildings have heretofore been erected for clerk's offices pursuant to law, shall continue to be kept in such buildings; and the clerk's offices in the other counties of this state, except the county of New-York, shall be kept within one mile of a court-house in such county, except in the counties of Westchester, Suffolk and Rockland, where the same shall be kept at such place as shall be designated by the board of supervisors of the county.

2 R. L., 251, § 1 to 4. By Laws of 1830, ch. 88, this section is repealed as to Queens county.

§ 55. The clerk of the county of Suffolk may, at his discretion, from time to time, establish offices in any two convenient places therein; and for this purpose, may, by writing under his hand and seal, appoint any competent person assistant clerk of the county, to take charge of one of the offices, and perform the duties thereof during the pleasure of the clerk; which appointment shall be recorded in the office of the clerk of the county.

ART. 4
Ib. Suffolk
county.

§ 56. Every county clerk shall appoint some proper person deputy clerk of his county, to hold during the pleasure of the clerk; and as often as such deputy clerk shall die, resign, or be removed from office, or remove out of the county, or become incapable of executing the duties of the office, another shall be appointed in his place. Every such appointment shall be in writing under the hand and seal of the clerk, and shall be recorded in the office of the clerk of the county.

Deputy
clerk.

1 R. L., 523, § 19; 2 R. L., 149, § 17; Laws of 1815, 88, § 2; 24 W., 217.

§ 57. Every person appointed to the office of deputy clerk, shall, before he enters on the duties of his office, take the oath of office, prescribed in the constitution of this state.

Ib.

§ 58. Whenever the county clerk shall be absent from the county, or by reason of sickness, or any other cause, shall be incapable of performing the duties of his office, his deputy may perform all the duties appertaining to the office of clerk of the county, except that of deciding upon the sufficiency of sureties for any officer.

Powers of
deputy.

See Laws of 1831, ch. 237.

§ 59. Whenever the office of any county clerk shall become vacant, his deputy shall perform all the duties, and be entitled to all the emoluments, and be subject to all the penalties appertaining to the office of clerk of the county, until a new clerk shall be elected or appointed for such county, and duly sworn.

Ib.

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1 R. L., 523, § 19; 2 R. L., 149, § 17; Laws of 1815, 88, § 2. Ante, 124, Chap. 5, Title 6, § 49; 24 W., 218; Laws of 1830, ch. 320, § 4.

§ 60. Whenever any commission or supersedeas shall be received at the clerk's office of any county, it shall be the duty of the clerk forthwith, at the expense of this state, to give notice thereof to every person named in such commission or supersedeas.

Notice to
persons ap-
pointed.

1 R. L., 459, § 4; Laws of 1815, 206.

§ 61. Whenever any person appointed to any office in any county in this state, who is required by law to execute a bond previous to entering on the duties of his office, or to renew such bond, shall neglect to execute or renew such bond in the manner and within the time required by law, it shall be the duty of the clerk of such county, forthwith to give notice to the governor of such neglect.

Notice to
governor as
to execut-
ing of
official
bond

Laws of 1820, 65, § 3; 1827, 218, § 2.

§ 62. The clerk of each county shall, on or before the fifteenth day of January in each year, give information to

To give
notice to
governor,

TITLE 1.
annually, as
to officers
in his
county.

the governor of all persons appointed to offices in his county, who during the previous year shall have taken the oath of office, or given the bond required by law; and of all persons required to take such oath or give such bond, who shall have neglected so to do; and also of all vacancies in such county, in any civil office.

See Laws of 1832, ch. 109, § 2; 1 R. L., 385, § 12.

Fees for
services
under three
last sec-
tions.

§ 63. The compensation of the several county clerks, for services and expenses in performing any of the duties prescribed in the three last preceding sections, and the fees of such clerks, for registering or recording any mortgage to the people of this state, shall be audited by the comptroller, and paid out of the treasury.

1 R. L., 530, § 9.

Religious
societies.

§ 64. The clerk of each county shall, on or before the first day of January in each year, report to the comptroller, the names of all the religious societies, that shall have been incorporated in his county during the preceding year.

Certified
copies and
transcripts.

§ 65. Copies of all papers duly filed in the office of the county clerk, and transcripts from the books of records kept therein, certified by such clerk, with the seal of his office affixed, shall be evidence in all courts in like manner as if the originals were produced.

Who to
decide on
sufficiency
of sureties
when
clerk's
office
vacant, &c.

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§ 66. In all cases in which a county clerk shall be authorised to judge of the competency of the sureties offered by a person appointed to office, if there be a vacancy in the office of county clerk, or he be absent from the county, or be incapable of performing the duties of his office, it shall be lawful for any two judges of the county courts, of whom the first judge shall be one, (unless there be a vacancy in his office, or he be absent or incapable as aforesaid,) to decide upon the competency of such sureties; and for that purpose, to administer any oath, and make any examination that may be required.

See Laws of 1844, ch. 125, § 1, 2, 3, 4, 6; Laws of 1815, 88, § 1; 1831, ch. 237; 1851, ch. 211; 1838; ch. 129; 1853, ch. 142; 1857, ch. 60.

ARTICLE FIFTH.

OF SHERIFFS AND CORONERS.

Sec. 67 & 68. Sheriffs to give bonds, and the penalty of such bonds.

69. Bond to be filed; clerk to examine sureties.

70. Sheriff to renew security annually; extent of such security.

71. Sheriffs to appoint under-sheriffs.

72. When office vacant, under-sheriff to execute the office, &c.

73. Sheriff may appoint deputies.

74. Appointment of under or deputy sheriff to be in writing; they are to take oath.

75. Sheriff to have custody of jail, and prisoners.

76. Sheriff to be paid out of the state treasury for certain services.

77. Whenever a sheriff shall remain committed he may be removed.

78. When first judge is to designate coroner to execute office of sheriff.

79. Coroner so designated to give bond.

80. If he neglect, judge to designate another coroner.

81. If vacancy in office of sheriff and under-sheriff, and but one coroner in office.

TITLE 2

manner, and be subject in all respects to the same regulations, as the original security required from such sheriff.

Laws of 1827, 213, § 1 & 2; 9 W., 260.

To appoint
under-
sheriff.

§ 71. The sheriff of each county in this state, shall, as soon as may be, after he takes upon himself the execution of his office, appoint some proper person under-sheriff of the same county, to hold during the pleasure of such sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or he become incapable of executing the same, another shall in like manner be appointed in his place.

1 R. L., 420, § 5; Laws of 1827, 218, § 4.

Powers of
under-
sheriff.

§ 72. Whenever a vacancy shall occur in the office of sheriff of any county, the under-sheriff of such county shall in all things execute the office of sheriff of the county, until a sheriff shall be elected or appointed, and duly qualified; and any default or misfeasance in office of such under-sheriff in the mean time, as well as before, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the condition of the bond executed by such under-sheriff to the sheriff by whom he was appointed.

8 Cow., 213; 3 Cow., 89; 18 J. R., 121; 10 Pal., 230.

Deputies.

§ 73. Every sheriff may appoint such and so many deputies as he may think proper; and persons may also be deputed, by any sheriff or under-sheriff, by an instrument in writing, to do particular acts.

11 B., 93; 9 B., 26; 20 W., 235.

Their ap-
pointment
and oath.

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§ 74. Every appointment of an under-sheriff, or of a deputy sheriff, shall be by writing, under the hand and seal of the sheriff, and shall be filed and recorded in the office of the clerk of the county; and every such under sheriff or deputy sheriff shall, before he enters on the execution of the duties of his office, take the oath of office prescribed in the constitution. But this section shall not extend to any person who may be deputed by any sheriff or under sheriff, to do a particular act only.

1 R. L., 420, § 5; Laws of 1827, 218, § 4; 2 N. Y., 126; 11 B., 93; 10 Pal., 230.

Custody of
jails.

§ 75. The sheriff of the city and county of New York, shall have the custody of the jail in that city used for the confinement of persons committed on civil process only, and of the prisoners in the same; and the sheriff of every other city and county of this state, shall have the custody of the jails and of the prisons thereof, and the prisoners in the same. And the sheriffs respectively, may appoint keepers of such jails and prisons, for whose acts they shall severally be responsible.

1 R. L., 422, § 7.

Fees for
services for
the state.

§ 76. Whenever a sheriff shall be required by any statutory provision, to perform any service in behalf of the people of this state, and for their benefit, which shall not be made

chargeable by law to his county, or to some officer or other person, his account for such services shall be audited by the comptroller, and be paid out of the treasury.

§ 77. Whenever the sheriff of any county, shall be committed to the custody of any other sheriff, or to the custody of any coroner or coroners, by virtue of any execution or attachment founded on the non-payment of monies received by him by virtue of his office, and shall remain so committed for the space of thirty days successively, such facts shall be represented to the governor by the officer in whose custody such sheriff may be, to the end that such sheriff may be removed from office.

Removal
for non-
payment of
monies.

§ 78. Whenever a vacancy shall occur in the office of sheriff of any county, and there shall be no under-sheriff of such county then in office, or the office of such under-sheriff shall become vacant, or he become incapable of executing the same, before another sheriff of the same county shall be elected or appointed, and qualified, and there shall be more than one coroner of such county then in office, it shall be the duty of the first judge of the county, forthwith to designate one of such coroners to execute the office of sheriff of the same county, until a sheriff thereof shall be elected or appointed, and qualified. Such designation shall be by instrument in writing, and shall be signed by the judge, and filed in the office of the clerk of the county, who shall immediately give notice thereof to the coroner.

One of the
coroners
when to be
designated.
[See ante,
p. 124,
Chap. 6,
Title 6,
§ 49.]

§ 79. The coroner so designated, within six days after receiving such notice, shall execute, with sureties, a joint and several bond to the people of this state, which shall be in the same amount, and with the same number of sureties, and be approved of in the same manner, and be subject in all respects to the same regulations, as the security required by law from the sheriff of such county. And after the execution of such bond, the coroner so designated shall execute the office of sheriff of the same county, until a sheriff shall be duly elected or appointed, and qualified.

His duty
and powers.

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§ 80. If the coroner so designated shall not, within the time above specified, give such security as is above required, it shall be the duty of the first judge to designate, in like manner, another coroner of the county, to assume the office of sheriff; and in case it shall be necessary so to do, the first judge shall proceed to make successive designations, until all the coroners of the county shall have been designated to assume such office. And all the provisions contained in the two last sections, shall apply to every such designation, and to the coroner named therein.

When
second or
other de-
signations
to be made.

§ 81. Whenever any such vacancies shall occur in the offices both of sheriff and under-sheriff of any county, if there shall be but one coroner of such county then in office, such coroner shall be entitled to execute the office of sheriff of the same county, until a sheriff shall be duly elected or appointed, and

When but
one cor-
oner, his
duty and
powers.

TITLE 2

When first
judge to
appoint.

qualified; but before he enters on the duties of such office, and within ten days after the happening of the vacancy in the office of the under-sheriff, he shall execute, with sureties, a joint and several bond to the people of this state, in the same amount, and with the same number of sureties, as may be required by law from the sheriff of such county; and such bond shall be subject in all respects, to the same regulations as the security required from the sheriff.

§ 82. If such coroner solely in office on the happening of such vacancies, shall neglect or refuse to execute such bond within the time above specified; or if all the coroners, where there are more than one in office on the happening of such vacancies, shall successively neglect or refuse to execute such bond within the time required, it shall be the duty of the first judge of the county, in which such vacancies shall exist, to appoint some suitable person to execute the office of sheriff of the same county, until a sheriff shall be duly elected or appointed, and qualified.

Id.

§ 83. Such appointment shall be in writing, under the hand and seal of the first judge, and shall be filed in the office of the county clerk, who shall forthwith give notice thereof to the person so appointed.

Duty and
power of
person ap-
pointed,

§ 84. The person so appointed, shall, within six days after receiving notice of his appointment, and before he enters on the duties of the office, give such security as may be required by law of the sheriff of such county, and subject to the same regulations; and after such security shall have been duly given, such person shall execute the office of sheriff of the county, until a sheriff shall be duly elected or appointed, and qualified.

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Coroners to
act until,
&c.

§ 85. Until some coroner designated, or some person appointed by the first judge, shall have executed the security above prescribed; or until a sheriff of the county shall have been duly elected or appointed, and qualified, the coroner or coroners of the county in which such vacancies shall exist, shall execute the office of sheriff of the same county.

1 R. L., 420, § 5; Laws of 1827, 218, § 4.

General
provision.

§ 86. Whenever any under-sheriff, coroner, coroners, or other person, shall execute the office of sheriff, pursuant to either of the eight last sections, the person so executing such office, shall be subject to all the duties, liabilities and penalties imposed by law upon a sheriff duly elected and qualified.

ARTICLE SIXTH.

OF SURROGATES.

Sec. 87. Surrogates to give bond; penalty thereof.

88. Clerk of county to judge of sufficiency of sureties.

Bond.

§ 87. Every person, hereafter appointed to the office of surrogate of any county, shall, within twenty days after receiving notice of such appointment, execute to the people of this

state, with two or more sureties, being freeholders, a joint and several bond, conditioned for the faithful performance of his duty, and for the application and payment of all monies and effects that may come into the hands of such surrogate in the execution of his office. The bond of the surrogate of the city and county of New-York, shall be in the penal sum of ten thousand dollars; of every other surrogate in the sum of five thousand dollars.

Penalty.

§ 88. The clerk of the county for which such surrogate shall have been appointed, shall be the judge of the sufficiency of the sureties; and in case he shall be satisfied by the oath of the sureties, or otherwise, that they are good and sufficient, he shall endorse on the bond, a certificate of his approval, and file such bond in his office, there to remain a matter of record.

Sufficiency of sureties.

See Laws of 1844, ch. 300, § 3; Laws of 1858, ch. 213; Laws of 1820 65, § 2 & 5; 1853, ch. 648.

ARTICLE SEVENTH.

OF DISTRICT ATTORNIES.

SEC. 89. To conduct prosecutions at oyer and terminer and general sessions.

90. When he fails to attend, court to appoint some person to act for him.

91. To prosecute for penalties and forfeitures exceeding 50 dollars.

92. To give receipts for monies received for fines, &c.

93. Annually to file an account of, and pay over monies received by him.

94. When not so accounted for and paid, suit to be instituted.

95. Pay of district attorneys.

§ 89. It shall be the duty of every district attorney to attend the courts of oyer and terminer and jail delivery, and general sessions, to be held from time to time, in the county for which he shall have been appointed; and to conduct all prosecutions for crimes and offences cognizable in such courts.

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General duties.

1 R. L., 414, § 1; 2 N. Y., 17.

§ 90. When any district attorney shall fail to attend any of the courts above specified, it shall be the duty of such court to appoint some proper person, being an attorney or counsellor at law, to transact the business of the district attorney during the sitting of the court; and the person so appointed shall be entitled to the same compensation for the services he shall perform, that the district attorney would have been entitled to, for the like services, and his account shall be audited and paid in the same manner.

Substitute when to be appointed.

Laws of 1824, 314, § 1.

§ 91. It shall be the duty of the several district attorneys to prosecute for all penalties and forfeitures, exceeding fifty dollars, which may be incurred in their respective counties, and for which no other officer is by law, specially directed to prosecute.

Penalties and forfeitures.

Laws of 1818, 307, § 7; 1820, 193, § 1, 2, 3.

§ 92. It shall be the duty of every district attorney, whenever he shall receive any monies for fines, recognizances,

Duplicating receipts.

TITLE 2.

forfeitures or penalties, to deliver to the officer or person paying the same, duplicate receipts, one of which shall be filed by such officer or person, in the office of the county treasurer.

Annual
account.

§ 93. Every district attorney shall, on or before the first Tuesday of October in each year, file in the office of the county treasurer, an account in writing, verified by the oath of such district attorney, of all monies received by him by virtue of his office, during the preceding year; and shall at the same time pay over such monies to the county treasurer.

To be sued
if he neglect
to account.

§ 94. Whenever any district attorney shall refuse or neglect to account for and pay over, the monies so received by him as required by the last section, it shall be the duty of the county treasurer to cause a suit to be instituted for the recovery of such monies, for the benefit of the county, against such district attorney.

Compensa-
tion.

§ 95. The district attorney of the city and county of New-York shall receive for his services an annual salary, not less than two thousand five hundred dollars, and not exceeding three thousand five hundred dollars, to be fixed and paid by the common council of that city; and the district attorneys of all the other counties in the state, shall be paid for their services in conducting criminal prosecutions, by their respective counties, upon their accounts duly taxed by some officer authorised to tax bills of costs in the supreme court, according to the rates allowed by law.

Laws of 1818, 307, § 6; 1821, 91; 2 H., 135; 1 H., 365; 4 Cow., 260.
See Laws of 1826, ch. 120; 1852, ch. 304; 1851, ch. 441.

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TITLE III.**OF LEGAL PROCEEDINGS IN FAVOR OF, AND AGAINST COUNTIES.**

- Sec.** 1. Controversies with counties, like those between individuals, &c.
2. Counties when to sue and be sued in name of board of supervisors.
3. In proceedings against supervisors, process to be served on chairman or clerk.
4. Where county is interested, inhabitants competent witnesses and jurors.
5. County may sue before justice, when individual can.
6. Costs recoverable as between individuals. Judgments a county charge.

May sue and
be sued.

§ 1. Whenever any controversy or cause of action, shall exist between any of the counties of this state, or between any such county and an individual or individuals, such proceedings shall be had, either at law or in equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect, as in other suits or proceedings of a similar kind between individuals and corporations.

12 N. Y., 63; 2 S. S. C., 471; 26 W., 69; 14 B., 52.

In what
name.

§ 2. In all such suits and proceedings, the county shall sue or be sued in the name of the board of supervisors thereof; except where county officers shall be authorised by law to sue in their name of office, for the benefit of the county.

5 N. Y., 67; 19 How. P. R., 373; 21 How. P. R., 182.

§ 3. In all legal proceedings against the board of supervisors, the first process, and all other proceedings requiring to be served, shall be served on the chairman or clerk of the board of supervisors; and whenever any such suit or proceeding shall be commenced, it shall be the duty of such chairman or clerk, to lay before the board of supervisors, at their next meeting, a full statement of such suit or proceeding, for their direction in regard to the defence thereof.

TITLE 4.
Process
how to be
served.

§ 4. On the trial of every action in which a county shall be interested, the electors and inhabitants of such county shall be competent witnesses and jurors.

Witnesses
and jurors.

§ 5. Any action in favor of a county, which if brought by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such county, in like manner before any such justice.

Suits before
justices.

§ 6. In all suits and proceedings prosecuted by or against counties, or by or against county officers, in their name of office, costs shall be recoverable as in the like cases between individuals. Judgments recovered against counties, or against county officers, in actions prosecuted by or against them in their name of office, shall be county charges, and when levied and collected, shall be paid to the person to whom the same shall have been adjudged.

Costs, &c.

Judgments
how paid.

TITLE IV.

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MISCELLANEOUS AND SPECIAL PROVISIONS.

- Sec. 1. Town and county officers to exhibit their accounts.
2. Officer presenting account to state the time employed.
3. County charges enumerated.
4. Accounts therefor to be presented to the supervisors to be audited.
5. Monies to defray county charges, how raised.
6. Certain expenses incurred by Richmond county, provided for.
7. Such payments to be made on the order of the board of supervisors.
8. Hamilton county to act with Montgomery.

§ 1. All town and county officers, and all other persons who may present to the board of supervisors, accounts for their services, to be audited and allowed, shall, before any such account or claim shall be passed upon or allowed, exhibit a just and true statement in writing of the nature of the service performed by them.

Accounts
for services.

Laws of 1825, 397, § 2.

§ 2. In all cases in which a specific compensation for any service is not provided by law, the officer or person presenting an account therefor, shall also exhibit in writing, a just and true statement of the time actually and necessarily devoted to the performance of such services.

§ 3. The following shall be deemed county charges:

1. The compensation of the members of the board of supervisors, of their clerk, and of the county treasurer:
2. The fees of the district attorney, and all expenses neces-

County
charges
enumerated.

TITLE 4.

sarily incurred by him in criminal cases arising within the county :

3. The accounts of the criers of the several courts within the county, for their attendance in criminal cases :

4. The compensation of sheriffs for the commitment and discharge of prisoners on criminal process, within their respective counties :

5. The compensation allowed by law to constables for attending courts of record, and reasonable compensation to constables and other officers, for executing process on persons charged with criminal offences ; for services and expenses in conveying criminals to jail ; for the service of subpoenas issued by any district attorney ; and for other services in relation to criminal proceedings, for which no specific compensation is prescribed by law :

6. The expenses necessarily incurred in the support of persons charged with, or convicted of crimes, and committed therefor to the several jails of the county :

7. The sums required by law to be paid to prosecutors and witnesses in criminal cases :

8. The accounts of the coroners of the county, for such services as are not chargeable to the persons employing them :

[396] 9. The monies necessarily expended by any county officer in executing the duties of his office, in cases in which no specific compensation for such services, is provided by law :

10. The accounts of the county clerks, for services, and expenses incurred under the sixth Chapter of this Act :

11. All charges and accounts for services rendered by any justice of the peace, under the laws for the relief and settlement of the poor of such county, and for their services in the examination of felons, not otherwise provided for by law :

12. The sums necessarily expended in each county, in the support of county poor-houses, and of indigent persons whose support is chargeable to the county :

13. The sums required to pay the bounties allowed by law for the destruction of wolves and other noxious animals, and chargeable to the county :

14. The sums necessarily expended in repairing the court-houses and jails of the respective counties :

15. The contingent expenses necessarily incurred for the use and benefit of a county : and,

16. Every other sum directed by law to be raised for any county purpose, under the direction of a board of supervisors.

1 R. L., 499, § 16 & 17 ; 2 R. L., 138 ; Laws of 1821, 214, 189 ; 1822, 102 ; 1823, 210 ; 5 N. Y., 67 ; 23 B., 358 ; 9 B., 266 ; 21 How. P. R., 125 ; 12 Ab., 199 ; 2 S. S. C., 471 ; 2 Cow., 533 ; 12 W., 257 ; See Laws of 1831, ch. 320, § 22 ; 1847, ch. 277 ; 1849, ch. 95.

Accounts
therefor.

§ 4. Accounts for county charges of every description, shall be presented to the board of supervisors of the county, to be audited by them.

5 N. Y., 66 ; 23 B., 338 ; 5 B., 609.

CHAP. 12.
Monies to
pay the
same, how
raised.

§ 5. The monies necessary to defray the county charges of each county, shall be levied on the taxable property in the several towns in such county, in the manner prescribed in the thirteenth Chapter of this act. And in order to enable their respective county treasurers to pay such contingent expenses, as may become payable from time to time, the boards of supervisors of the several counties, shall annually cause such sum to be raised in advance, in their respective counties, as they shall deem necessary for that purpose.

1 H., 53; 1 R. L., 419, § 17.

§ 6. When any person who shall have contributed to the marine hospital fund, and who shall not be a citizen of the county of Richmond, shall be charged with having committed any crime or misdemeanor within the jurisdiction of that county, and on the premises called the quarantine-ground, or within the limits or buoys designating the place of anchorage for vessels at quarantine, all the expenses and charges actually incurred and paid by the county of Richmond, in the apprehension, trial and maintenance of such persons, shall be repaid to the treasurer of that county, by the health commissioner, out of the monies which may from time to time, be in his hands for the use of the marine hospital.

Richmond
county.

Laws of 1825, 329.

§ 7. Such payment shall be made on the order, in writing, of the board of supervisors of the county of Richmond, accompanied by a specification of such expenses and charges.

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ib

Laws of 1825, 329.

§ 8. The county of Hamilton shall act in conjunction with the county of Montgomery, as a part thereof, until the said county of Hamilton shall be organized as a separate county, in conformity to the act, entitled "An act to divide the county of Montgomery into two counties, and for other purposes," passed April 12, 1816.

Hamilton
county.

Laws of 1816, 119. See Laws of 1831, ch. 320; 1847, ch. 277; 1849, ch. 96.

CHAP. XIII.

Of the Assessment and Collection of Taxes.

(Took effect January 1, 1883.)

TITLE 1. — Of the property liable to taxation.

TITLE 2. — Of the place and manner in which property is to be assessed.

TITLE 3. — Of the collection of taxes, the disposition to be made of the monies collected, and the proceedings in relation to unpaid taxes.

TITLE 4. — Regulations concerning the assessment of taxes on incorporated companies, and the commutation or collection thereof.

TITLE 5. — Miscellaneous provisions of a general nature.

TITLE 6. — Special and local provisions.

TITLE I.

TITLE I.

OF THE PROPERTY LIABLE TO TAXATION.

SEC. 1. Property subject to taxation.

2. Meaning of terms "land," "real estate," and "real property."

3. Meaning of terms "personal estate," and "personal property."

4. Property exempt from taxation.

5. If property of ministers exceed \$1,500, that sum to be deducted.

6. Lands sold by state to be assessed, though not conveyed.

7. When owners of stock are not to be taxed therefor.

Land and
personal
estate.

§ 1. All lands and all personal estate within this state, whether owned by individuals or by corporations shall be liable to taxation, subject to the exemptions herein after specified.

This Chapter was compiled, with various alterations and additions, from the following statutes: Laws of 1823, 389; 1824, 16, 112; 1825, 282, 330, 355, 373; 1826, 45, 94, 135, § 4; 327, § 6 & 7; 1827, 4, § 4; 23 N. Y., 225; 28 B., 319; 16 B., 651; 8 B., 453; 7 B., 131; 4 Pal., 401; 2 S. S. C., 552; 21 How. P. R., 385; 17 How. P. R., 208; 10 How. P. R., 138.

"Land"
defined.

§ 2. The term "land," as used in this Chapter, shall be construed to include the land itself, all buildings, and other articles erected upon or affixed to the same, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the state; and the terms "real estate," and "real property," whenever they occur in this Chapter, shall be construed as having the same meaning as the term "land," thus defined.

2 N. Y., 478; 2 S. S. C., 552.

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"Personal
estate"
defined.

§ 3. The terms "personal estate," and "personal property," whenever they occur in this Chapter, shall be construed to include all household furniture; monies; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in monied corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

18 B., 104.

Property
exempt.

§ 4. The following property shall be exempt from taxation:

1. All property, real or personal, exempted from taxation by the constitution of this state, or under the constitution of the United States:

2. All lands belonging to this state, or the United States:

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school-house, court-house and jail; and the several lots whereon such buildings are situated, and the furniture belonging to each of them:

4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to, or connected with the same:

5. The real and personal property of every public library:

6. All stocks owned by the state, or by literary or charitable institutions :

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth Title of this Chapter :

8. The personal property of every minister of the gospel, or priest, of any denomination ; and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars : and,

9. All property exempted by law from execution.

23 N. Y., 193; 13 N. Y., 229; 5 N. Y., 376; 19 B., 22; 11 J. R., 80; 2 Du., 529; 3 S. S. C., 413; 1 B., ch. 445; See Laws of 1845, ch. 196, § 2.

§ 5. If the real and personal estate, or either of them, of any minister or priest, exceed the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation.

Minister or priest.

§ 6. Lands sold by the state, though not granted, or conveyed, shall be assessed in the same manner as if actually conveyed.

Lands sold by the state.

§ 7. The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individul, for such stock.

Owner of stock.

See Laws of 1855, ch. 37; 1852, ch. 282, 46; 1853, ch. 406; 1856, ch. 183; 1857, ch. 45, 98.

TITLE II.

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OF THE PLACE AND MANNER IN WHICH PROPERTY IS TO BE ASSESSED.

ART. 1. — Of the place in which property is to be assessed.

ART. 2. — Of the manner in which assessments are to be made, and the duties of the assessors.

ART. 3. — Of the equalization of the assessments, and the correction of the assessment rolls.

ARTICLE FIRST.

OF THE PLACE IN WHICH PROPERTY IS TO BE ASSESSED.

SEC. 1. Persons to be assessed where they reside, for lands in such town.

2. If land be occupied by another person, it may be assessed in name of either.

3. Unoccupied lands, when denominated "lands of non-residents."

4. Where land to be taxed, when divided by division line of towns.

5. Persons to be assessed where they reside, for personal property.

6. Real and personal property of incorporated companies, where assessed.

§ 1. Every person shall be assessed in the town or ward, where he resides when the assessment is made, for all lands then owned by him within such town or ward, and occupied by him, or wholly unoccupied.

Lands where taxed.

23 N. Y., 285; 15 N. Y., 316.

§ 2. Land occupied by a person other than the owner may be assessed to the owner or occupant, or as non-resident lands.

Ibid.

23 N. Y., 285; Laws of 1851, ch. 176.

TITLE 2
Lands
where
taxed.

§ 3. Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as herein after provided.

23 N. Y., 285; 16 B., 651.

How, if
divided by
town line.

§ 4. When the line between two towns or wards divides a farm, or lot, the same shall be taxed, if occupied, in the town or ward where the occupant resides; if unoccupied, each part shall be assessed in the town in which the same shall lie; and this, whether such division line be a town line only, or be also a county line.

9 W., 282; 4 W., 431.

Personal
estate
where
taxed.

§ 5. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all personal estate in his possession, or under his control as agent, trustee, guardian, executor, or administrator; and in no case shall property so held, under either of those trusts, be assessed against any other person. In case any person possessed of such personal estate shall reside during any year in which taxes may be levied in two or more counties, towns, or wards, his residence for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town, or ward in which his principal business shall have been transacted, but the products of any state of the United States consigned to agents in any town or ward of this state for sale on commission for the benefit of the owner thereof shall not be assessed to such agents, nor shall such agents of monied corporations or capitalists be liable to taxation under this section for any monies in their possession or under their control, transmitted to them for the purposes of investment or otherwise.

15 N. Y., 318; 11 N. Y., 571; 18 B., 105; 4 W., 226; 9 Pal., 62; 5 S. S. C., 44; Laws of 1850, Ch. 92; 1851, ch. 176.

Property of
corpora-
tions.

[300]

§ 6. The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company, shall be; or if such company have no principal office, or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company, are collected in several towns or wards, the company shall be assessed in the town or ward, in which the treasurer or other officer authorised to pay the last preceding dividend, resides.

21 N. Y., 452; 19 N. Y., 408; 31 B., 618; 12 B., 225; 1 B. Ch., 445; 4 Pal., 394.

ARTICLE SECOND.

OF THE MANNER IN WHICH ASSESSMENTS ARE TO BE MADE, AND THE DUTIES OF THE ASSESSORS.

SEC. 7. Assessors may divide their town or ward into districts.

8. To ascertain number of taxable inhabitants, and amount of taxable property.
9. Form of assessment roll.
10. Manner in which persons are to be assessed as trustees, &c.
- 11, 12 & 13. Manner in which lands of non-residents are to be designated in assessment roll.
14. When assessors to have survey made of non-resident lands.
- 15 & 16. (Repealed.)
17. How value is to be estimated.
18. Last section applies to all assessments.
19. Assessment rolls when to be completed, and where to be left; notices thereof.
20. What notice to specify.
21. Assessment roll may be inspected during the twenty days specified in notice.
- 22 to 26. (Repealed.)
27. When and to whom assessment rolls are to be delivered.
28. Assessors to follow instructions of comptroller.
29. Penalty upon assessor for neglect of duty.
30. If any assessor shall omit to perform his duties, other assessors to perform them.

§ 7. The assessors chosen in each town or ward, may divide the same by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in such town or ward.

Assessment districts.

15 N. Y., 318; 11 N. Y., 563.

§ 8. Between the first days of May and July, in each year, they shall proceed to ascertain, by diligent inquiry, the names of all the taxable inhabitants, in their respective towns or wards, and also all the taxable property, real or personal, within the same.

Inquiry to be made.

15 N. Y., 318; 11 N. Y., 563; 19 B., 22.

§ 9. They shall prepare an assessment roll, in which they shall set down in four separate columns, and according to the best information in their power:

Assessment roll.

1. In the first column, the names of all the taxable inhabitants, in the town or ward, as the case may be:
2. In the second column, the quantity of land to be taxed to each person:
3. In the third column, the full value of such land, according to the definition of the term land, as given in the first Title of this Chapter:
4. In the fourth column, the full value of all the taxable personal property owned by such person, after deducting the just debts owing by him.

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15 N. Y., 316; 11 N. Y., 563; 7 N. Y., 521; 19 B., 22; 7 B., 133; 5 B., 609; 3 D., 117.

§ 10. Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment; and he shall be assessed for the value of the real estate held by him, in such representative

Trustee, guardian, &c.

TITLE 2.

Lands of
non-resi-
dents.

character, at the full value thereof, and for the personal property held by him in such representative character, deducting from such personal property the just debts due from him in such representative character.

§ 11. The lands of non-residents shall be designated in the same assessment roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections.

2 N. Y., 69.

1b.

§ 12. If the land to be assessed, be a tract which is subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows :

1. They shall designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded ;

2. If they can obtain correct information of the subdivisions they shall put down in their assessment rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the names of their owners, beginning at the lowest number and proceeding in numerical order to the highest ;

3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein, liable to taxation ;

4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity ;

5. If such quantity be a full lot, it shall be designated by the number alone ; if it be a part of a lot, the part must be designated by boundaries, or in some other way, by which it may be known.

2 N. Y., 69 ; H. & D., 144 ; 16 B., 655.

1b.

§ 13. If the land so to be assessed be a tract which is not subdivided, or if its subdivisions can not be ascertained by the assessors, they shall proceed as follows :

1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they can not obtain correct information of the subdivisions, as the case may be ;

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2. They shall set down in the proper column, the quantity and valuation as above directed ;

3. If the quantity to be assessed be the whole tract, such a description by its name or boundaries will be sufficient ; but if a part only is liable to taxation, that part or the part not liable, must be particularly described ;

4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed ; and if they can not otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript

maps to be made, for the purpose of ascertaining the situation and quantity of every such occupied part ;

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered in like manner to the assessors ;

6. The assessors shall then complete the assessment of the tract, and shall deposit the map in the town clerk's office, for the information of future assessors. And the expense of making such survey and maps shall be immediately repaid to the supervisor, out of the county treasury ; and shall be added by the board of supervisors to the tax on the tract, distinguishing it from the ordinary tax.

2 N. Y., 69.

§ 14. Whenever it shall be deemed necessary by the assessors of any town, to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

Survey of
non-resi-
dent lands.

12 B., 223.

Secs. 15, 16 repealed by Laws of 1851, ch. 176.

§ 17. All real and personal estate liable to taxation, shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor.

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Rule of
valuation.

16 B., 244. See Laws of 1851, ch. 176.

§ 18. The preceding section shall be followed in all assessments made under this Chapter, except where the assessors shall be specially required by law to observe a different rule.

Qualifica-
tion.

§ 19. The assessors shall complete the assessment rolls on or before the first day of August in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall also forthwith cause notices thereof to be put up at three or more public places in their town or ward ; and in case the assessment roll shall include property belonging to a rail road corporation, they shall, at the same time, cause a like notice to be mailed to the treasurer thereof, or delivered to the rail road agent at the nearest station.

Roll when
to be com-
pleted ;
notice.

Laws of 1857, ch. 536 ; 1858, ch. 110 ; 12 J. R., 413 ; 15 N. Y., 319 ; 7 N. Y., 521.

§ 20. Such notices shall set forth that the assessors have completed their assessment roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August, and that on that day the assessors will meet, at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors, on such day, to meet

Contents of
notice.

TITLE 2.

at the time and place specified, and hear and examine all complaints in relation to such assessment that may be brought before them; and they are hereby empowered, and it shall be their duty, to adjourn from time to time, as may be necessary, to hear and determine, in accordance with the rule prescribed by Section 15 of said Title two, such complaints. But in the several cities of this state, the notices required by this section may conform to the requirements of the respective laws regulating the time, place and manner, for revising assessments in said cities in all cases where a different time, place and manner, is prescribed by said laws from that mentioned in this act.

Laws of 1851, ch. 176; 1857, ch. 536; 15 N. Y., 319.

Inspection
of roll.

§ 21. The assessor with whom such assessment roll is left, shall submit the same, during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose.

Sections 22, 23, 24, 25, 26, repealed by Laws of 1851, ch. 176; 1857, ch. 536.

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Roll to be
delivered.

§ 27. The roll, thus certified, shall, on or before the first day of September in every year, be delivered by the assessors of each ward, in the city of New-York, to the clerk of the city, and by the assessors of every other town or ward, to the supervisor thereof, who shall deliver the same to the board of supervisors at their next meeting.

15 N. Y., 319; 7 B., 140.

Duty of
assessors.

§ 28. The assessors in the execution of their duties, shall use the forms, and pursue the instructions which shall from time to time be transmitted to them by the comptroller.

Ib.

§ 29. If any assessor shall wilfully refuse or neglect to perform any of the duties required of him, by this Chapter, he shall forfeit, to the people of this state, the sum of fifty dollars.

6 Cow., 480.

Ib.

§ 30. If any assessor shall neglect, or from any cause omit to perform his duties, the other assessors, or either of them, of the town or ward, shall perform such duties, and shall certify to the supervisors with their assessment roll, the name of such delinquent assessor, stating therein the cause of such omission.

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ARTICLE THIRD.

OF THE EQUALIZATION OF THE ASSESSMENTS, AND THE CORRECTION OF THE ASSESSMENT ROLLS.

SEC. 31. Assessment rolls to be examined by board of supervisors.

32. Board may alter the description of the lands.

33. To estimate the tax to be paid.

34. To add up, and set down the aggregate valuations.

35. To cause a copy of corrected roll to be delivered to each supervisor.

36. To cause a copy to be delivered to collector of every town, &c.

37. Warrant of supervisors to be annexed; its form.

38. Account of rolls and warrants to be sent to county treasurer.

39. Warrant to conform to the laws respecting cities.

§ 31. The board of supervisors of each county in this state, at their annual meeting, shall examine the assessment rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or ward, bear a just relation to the valuations in all the towns and wards, in the county; and they may increase or diminish the aggregate valuations of real estates, in any town or ward, by adding or deducting such sum upon the hundred as may, in their opinion, be necessary, to produce a just relation between all the valuations of real estates in the county; but they shall, in no instance, reduce the aggregate valuations of all the towns and wards, below the aggregate valuation thereof, as made by the assessors.

21 B., 611.

§ 32. The board of supervisors shall also make such alterations in the descriptions of the lands of non-residents, as may be necessary to render such descriptions conformable to the provisions of this Chapter; and if such alterations cannot be made, they shall expunge the descriptions of such lands, and the assessments thereon, from the assessment rolls.

ART. 2.
Supervisors
to examine
assessment
roll.

Lands of
non-resi-
dents.

§ 33. They shall also estimate and set down in a fifth column, to be prepared for that purpose, in the assessment rolls, opposite to the several sums set down as the valuations of real and personal estates, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax thereon.

Tax to be
set down.

§ 34. They shall also add up and set down the aggregate valuations of the real and personal estates in the several towns and wards, as corrected by them; and shall cause their clerk to transmit to the comptroller, by mail, a certificate of such aggregate valuations, showing separately, the aggregate amount of real and personal estate in each town or ward, as corrected by the board.

Aggregate
valuation.

§ 35. They shall cause the corrected assessment roll of each town or ward, or a copy thereof, to be delivered to each of the supervisors of the several towns or wards, who shall deliver the same to the clerk of their city or town, to be kept by him for the use of such city or town.

Corrected
assessment
roll.

§ 36. The boards of supervisors of the several counties in this state, shall cause the corrected assessment roll of each town or ward in their respective counties, or a fair copy thereof, to be delivered to the collector of such town or ward, on or before the fifteenth day of December in each year.

(306)
Id.

§ 37. To each assessment roll, so delivered to a collector, a warrant, under the hands and seals of the board of supervisors, or of a majority of them, shall be annexed, commanding such collector, to collect from the several persons named in the assessment roll, the several sums mentioned in the last column of such roll, opposite to their respective names.

Warrant to
be annexed,
its con-
tents.

If the warrant be directed to the collector of a town, it shall direct the collector, out of the monies so to be collected, after

TITLE 2

deducting the compensation to which he may be legally entitled, to pay,

1. To the commissioners of common schools of his town, such sum as shall have been raised for the support of common schools therein :

2. To the commissioners of highways of the town, such sum as shall have been raised for the support of highways and bridges therein :

3. To the overseers of the poor of the town, if there be no county poor-house, or other place provided in the county for the reception of the poor, such sum as shall have been raised for the support of the poor in such town :

4. To the supervisor of the town, all other monies which shall have been raised therein, to defray any other town expenses : And,

5. To the treasurer of the county, the residue of the monies so to be collected.

If the warrant be directed to the collector of a ward, it shall direct the collector to pay all the monies to be collected, after deducting his compensation, to the treasurer of the county.

In all cases, the warrant shall authorise the collector, in case any person named in the assessment roll shall refuse or neglect to pay his tax, to levy the same by distress and sale of the goods and chattels of such person ; and it shall require all payments therein specified, to be made by such collector, on or before the first day of February then next ensuing.

11 N. Y., 392 ; 2 N. Y., 473 ; 30 B., 608 ; 16 B., 656 ; Laws of 1845, ch. 180.

Account to
be transmit-
ted to
county
treasurer.

§ 38. As soon as the board of supervisors shall have sent or delivered the rolls, with such warrants annexed, to the collectors, they shall transmit to the treasurer of the county an account thereof, stating the names of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be collected, and the persons to whom, and the time when the same are to be paid ; and the county treasurers, on receiving such account, shall charge to each collector the sums to be collected by him.

26 B., 92.

Cities.

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§ 39. Wherever the laws respecting cities, shall have directed the monies assessed for any local purpose, to be paid to any person or officer, other than those named in the preceding thirty-seventh section, the collector's warrant may be varied accordingly, so as to conform to such alteration.

See Laws of 1845, ch. 180 ; 1857, ch. 139.

TITLE III.**OF THE COLLECTION OF TAXES, THE DISPOSITION TO BE MADE OF THE MONIES COLLECTED, AND THE PROCEEDINGS IN RELATION TO UNPAID TAXES.**

ART. 1. — Of the manner in which taxes are to be collected, and the duties of the collector.

ART. 2. — Of the payments and returns to be made by the county treasurers, and the duty of the comptroller, and other officers thereupon.

ART. 3. — Of sales for unpaid taxes, and the conveyance and redemption of lands sold.

ARTICLE FIRST.**OF THE MANNER IN WHICH TAXES ARE TO BE COLLECTED, AND THE DUTIES OF THE COLLECTOR.**

SEC. 1. Collectors to proceed to collect the taxes.

2. Tax to be levied by distress and sale.

3. Collector to give notice of time and place of sale.

4. If property sells for more than tax, surplus how to be disposed of.

5. Remedy against persons who remove before collection of tax.

6. Collectors to pay money as required in warrant.

7. When the taxes collected for town charges to be paid to county treasurer.

8. When collector is to receive tax on part of a lot.

9. Person paying tax on part, to state who the owner is.

10. Collector to deliver a list of uncollected taxes.

11. If any collector refuse to serve, &c., supervisor and two justices to appoint another.

12. Warrant to be issued to the person so appointed.

13. If collector neglects to pay over monies, county treasurer to issue warrant.

14. Duty of sheriff to whom such warrant shall be directed.

15. Sheriff to state in his return the amount collected.

16. If none, or a part only be collected, bond to be put in suit.

17. If sheriff neglect to make return, &c., to be proceeded against by attachment.

18. If proceedings by attachment are had, county treasurer to certify it to comptroller.

19. Attorney-general to prosecute sheriff for sum due on warrant.

20. When collector settles for taxes, county treasurer to give satisfaction piece.

21. Upon production of satisfaction piece, county clerk to discharge collector's bond.

22. Fees of officers taking acknowledgment of such satisfaction pieces.

§ 1. Every collector, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call, at least once, on the person taxed, or at the place of his usual residence, if in the town or ward for which such collector has been chosen, and shall demand payment of the taxes charged to him on his property.

Collector to call for taxes.

See Laws of 1845, ch. 180, § 29, 30, 32; 1847, ch. 455; 1 Cal., 91; 17 B., 145.

§ 2. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found, within the district of the collector; and no claim of property to be made thereto by any other person, shall be available to prevent a sale.

Proceedings in case of refusal to pay.

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Replevin prohibited in this case, in Part III. See General Index, Title *Replevin*; 10 J. R., 404; 4 W., 223; 4 B., 17; 7 B., 127; 15 B., 595.

TITLE 2.
Sale, &c.

§ 3. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up, in at least three public places, in the town where such sale shall be made. The sale shall be by public auction.

10.

§ 4. If the property distrained shall be sold for more than the amount of the tax, the surplus shall be returned to the person in whose possession such property was, when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus monies shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties shall be determined by due course of law.

Mode of determining rights of parties, prescribed in Part III. See General Index, Title *Taxes*.

Proceed-
ings in case
of removal
of person
taxed.

§ 5. In case any person upon whom any tax now is, or hereafter shall be assessed, in any ward of any of the cities, or in any town within this state shall have removed out of such ward or town, after such assessment, and before such tax ought by law to have been collected; or if any person shall neglect or refuse to pay any tax which now is, or hereafter shall be assessed in any ward of either of the said cities, or in any town, upon any estate of such person, situated out of the ward or town in which he shall reside, and within the county; it shall be lawful, in either of those cases, for the collector of such ward or town, to levy and collect such tax of the goods and chattels of the person assessed, in any ward within the said cities, or in any town within the said county, to which such person shall have so removed, or in which he shall reside.

7 B., 131; Laws of 1842, ch. 318.

Collector to
pay over
monies

§ 6. Every collector shall, within one week after the time mentioned in his warrant, for paying the monies directed to be paid to the town officers of his town and to the county treasurer, pay to such town officers and county treasurer, the sums required in such warrant to be paid to them respectively, first retaining the compensation to which he may be legally entitled. The town officers to whom any such monies shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the collector with the county treasurer, and shall entitle him to a credit, in the books of the county treasurer, for the amount therein stated to have been received; and no other evidence of such payment shall be received by the county treasurer.

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2 N. Y., 478; 30 B., 608; 1 D., 233; Laws of 1842, ch. 318.

§ 7. Whenever any greater amount of taxes shall be assessed in any town than the town charges thereof, and its proportion of the state tax, and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and the same shall go to the reduction of the tax of the succeeding year.

ART. 1.
If greater sum collected than town charges, surplus how disposed of.

§ 8. The collector shall receive the tax on a part of any lot, piece or parcel of land, charged with taxes, provided the person paying such tax shall furnish a particular specification of such part; and if the tax on the remainder of such lot, piece or parcel of land, shall remain unpaid, the collector shall enter such specification, in his return to the county treasurer, to the end that the part on which the tax remains unpaid, may be clearly known.

Tax on part of lot.

§ 9. If the part on which the tax shall be so paid, be an undivided share, then the person paying the same, shall state to the collector who is the owner of such share, that it may be excepted in case of a sale for the tax on the remainder. And the collector shall enter the name of such owner on his account of arrears of taxes.

Id.

§ 10. If any of the taxes mentioned in the tax list annexed to his warrant shall remain unpaid, and the collector shall not be able to collect the same, he shall deliver to the county treasurer an account of the taxes so remaining due; and upon making oath before the county treasurer, or in case of his absence, before any justice of the peace, that the sums mentioned in such account remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels, belonging to, or in the possession of the persons charged with, or liable to pay such sums, whereon he could levy the same, he shall be credited by the county treasurer with the amount thereof.

Duty of collector as to unpaid taxes.

2 N. Y., 69; 30 B., 608; Laws of 1836, ch. 461; 1853, ch. 69.

§ 11. If any person chosen or appointed to the office of collector of any town or ward in this state, shall refuse to serve, or shall die, resign, or remove out of the town or ward, before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same, by reason of sickness or any other cause, the supervisor and any two justices of such town or ward, shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject to the like duties and penalties, and have the same powers and compensation, as the collector in whose place he was appointed; and the supervisor shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector, or his sureties, from any liability incurred by him or them.

Proceedings if collector refuse to serve, &c., another appointed.

§ 12. If a warrant shall have been issued by the board of supervisors prior to any appointment under the last section, the original warrant, if the same can be obtained, shall be

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Warrant to person appointed.

TITLE 2.

delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to himself; but if such warrant can not be obtained, a new one shall be made out by the clerk of the board of supervisors of the county, which shall be directed to the collector so appointed. And upon every such appointment, the supervisor of the town or ward, if he shall think it necessary, may extend the time limited for the collection of the taxes, for a period not exceeding thirty days; of which extension he shall forthwith give notice to the county treasurer.

Proceedings in case collector neglects to pay over monies.

§ 13. If any collector shall refuse or neglect to pay to the several town officers of his town or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and return such warrant within forty days after the date thereof; which warrant the county treasurer shall immediately deliver to the sheriff of the county; but no such warrant shall be issued by the county treasurer for the collection of monies payable to town officers, without proof, by the oath of such town officers, of the refusal or neglect of the collector to pay the same, or account therefor as above provided.

30 B., 609, 655; Laws of 1857, ch. 585.

Duty of sheriff on warrant against collector.

§ 14. The sheriff to whom such warrant is directed, shall immediately cause the same to be executed, and shall make return thereof to the county treasurer, within the time therein specified, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. Such part of the monies collected, if any, as ought to have been paid by the collector to town officers, shall be paid by the county treasurer to the officers to whom the collector was directed to pay the same: but if the whole amount of monies due from the collector, shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid to him, before making any payment to the town officers.

26 B., 92.

Sheriff's return.

§ 15. If the whole sum due from the collector shall be collected, the sheriff shall so state in his return; but if a part only, or if no part of such sum shall be collected, the sheriff shall state in his return the amount levied, if any, exclusive of his fees, and shall also certify that such collector has no goods or chattels, lands or tenements, in his county, from

which the monies, or the residue thereof, as the case may be, could be levied; and in either case, the county treasurer shall forthwith give notice to the supervisor of the town or ward, of the amount due from such collector.

§ 16. The supervisor shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit; and the monies recovered shall be applied and paid by the supervisor, in the same manner in which it was the duty of the collector to have applied and paid the same.

1 D., 233.

§ 17. If any sheriff shall neglect to return any such warrant, or to pay the money levied thereon, within the time limited for the return of such warrant; or shall make any other return than such as is above mentioned, the county treasurer shall forthwith proceed to collect, by attachment, the whole sum directed to be levied by such warrant.

Mode of proceeding against the sheriff in this case, prescribed in Part III.
See General Index, Title *Attachment*.

§ 18. In case the county treasurer shall fail to collect such monies by attachment, he shall certify to the comptroller, that he has issued such warrant, stating its contents, that the sheriff has neglected to return the same, in the manner required by law, or to pay the money levied thereon, as the case may be, and that he has pursued the remedy, by attachment, without effect.

9 W., 23.

§ 19. The comptroller shall give notice thereof to the attorney-general, who shall immediately prosecute such sheriff, and his sureties, for the sum due on such warrant; which sum, when collected, shall be paid to the treasurer of this state, and by him, on the comptroller's warrant, to the county treasurer.

§ 20. Upon the settlement of the amount of taxes, directed to be collected by any collector, in any of the towns or wards in this state, (the city of New-York excepted,) the county treasurer shall, if requested, give to such collector, or to any of his sureties, a satisfaction piece in writing, and shall acknowledge the same, before some person authorised to take acknowledgments of the satisfaction of judgments in courts of record.

§ 21. Upon the production of such satisfaction piece, acknowledged as aforesaid, the clerk of the county shall enter satisfaction of record of the collector's bond, which shall thereby be discharged.

§ 22. The officers taking and entering such acknowledgment of satisfaction, shall be entitled to the same fees as for taking and entering acknowledgment of satisfaction of a judgment in the courts of common pleas.

See Laws of 1845, ch. 180; 1847, ch. 482; 1842, ch. 318; 1853, ch. 69; 1836, ch. 461; 1857, ch. 585.

Collector's
bond when
to be sued.

Proceed-
ings against
sheriff if he
neglect to
return
warrant or
pay.

Satisfaction
of collect-
or's bond.

TITLE 4.
[402]

ARTICLE SECOND.

OF THE PAYMENTS AND RETURNS TO BE MADE BY THE COUNTY TREASURERS, AND THE DUTY OF THE COMPTROLLER, AND OTHER OFFICERS THEREUPON.

ARTICLE THIRD.

OF SALES FOR UNPAID TAXES AND THE CONVEYANCE AND REDEMPTION OF LANDS SOLD.

[Articles 2 & 3 of this Title were repealed by Laws of 1850, ch. 298, and the latter was repealed by Laws of 1855, ch. 427. Both those acts established a new system in place of these two articles, but neither were made parts of the Revised Statutes.]

See Laws of 1846, ch. 327; 1851, ch. 371.

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TITLE IV.

REGULATIONS CONCERNING THE ASSESSMENT OF TAXES ON INCORPORATED COMPANIES, AND THE COMMUTATION OR COLLECTION THEREOF.

- SEC. 1. Monied corporations, liable to taxation.
2. Such company to deliver statement annually to assessors.
 3. A like statement to be delivered to comptroller.
 4. Forfeiture for omitting.
 5. If company prosecuted, terms on which suit may be discontinued.
 6. Assessors to enter such companies and their property in assessment roll.
 7. (Repealed.)
 8. Value of stock may be reduced.
 - 9 to 14. (Repealed.)
 15. Assessments on companies to be set down in 5th column of corrected roll.
 16. Supervisors to send names of companies to comptroller, &c.
 17. Taxes on companies to be demanded; how collected.
 18. To be paid out of the funds of the company.
 19. If collector cannot collect tax, to return same to county treasurer, &c.
 20. County treasurer to certify facts to comptroller; taxes how to be credited.
 21. Duty of comptroller and attorney-general.
 22. Chancellor to order sequestration, to satisfy taxes and costs.
 23. Attorney-general may also recover such tax with costs.
 24. Rail roads to furnish lists.
 25. Effect of the lists.
 26. Penalty for neglect.
 27. Certain sections applicable.
 28. Repealing clause.

Companies
liable to
taxation.

§ 1. All monied or stock corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital, in the manner herein after prescribed.

See Laws of 1853, ch. 469; 23 N. Y., 193; 21 N. Y., 452; 16 N. Y., 424; 8 N. Y., 242; 4 N. Y., 444; 32 B., 511; 28 B., 320; 20 B., 81; 8 B., 463; 7 H., 261, 504; 4 H., 22; 1 H., 606; 25 W., 696; 10 W., 186; 4 Cow., 556; 20 How. P. R., 184; 15 How. P. R., 173; 5 S. S. C., 10.

Officers to
deliver
statements
to assess-
ors.

§ 2. The president, cashier, secretary, treasurer, or other proper officer, of every such incorporated company, shall, on or before the first day of July in each year, make and deliver to the assessors, or one of them, of the town or ward in which such company is liable to be taxed, according to the provisions of the sixth section of the second Title of this Chapter, a written statement, specifying,

1. The real estate, if any, owned by such company, the towns or wards in which the same is situated, and the sums actually paid therefor :

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real estate, and the amount of such capital stock held by the state, and by any incorporated literary or charitable institution : And,

3. The town or ward in which the principal office or place of transacting the financial business of such company, is situated ; or if there be no such principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed, under the provisions of this Chapter.

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21 N. Y., 452; 28 B., 320; 17 How. P. R., 208.

§ 3. The president or other proper officer of every such company, shall also deliver to the comptroller, on or before the first day of July in each year, a written statement, containing the same matters required by the foregoing section, to be specified in the statement to be delivered to the assessors. The statements required by this and the preceding section of this Title, shall be certified under the oath of the said president or other proper officer, to be in all respects just and true.

And to
comptrol-
ler.

§ 4. If the statements above required, or either of them, shall not be furnished by any company to the assessors and to the comptroller, within thirty days after the time above provided, the company neglecting to furnish such statements, or either of them, shall forfeit to the people of this state, for each statement omitted to be furnished, the sum of two hundred and fifty dollars : and it shall be the duty of the comptroller to furnish the attorney-general with an account of all companies that shall neglect to render such lists, that he may prosecute for the penalties hereby imposed.

Penalty.

§ 5. If any company, that shall be prosecuted for any such penalty, shall pay the costs of prosecution and furnish the statement required, the comptroller, if he shall be satisfied that the omission was not wilful, may, in his discretion, discontinue such suit.

Suit there-
for.

§ 6. The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies, and the property of all other incorporated companies, liable to taxation in their respective towns, in their assessment rolls, in the following manner :

Companies,
how as-
sessed.

1. They shall insert in the first column of their assessment rolls, the name of each incorporated company in their respective towns or wards, liable to taxation on its capital, or otherwise ; and under its name, they shall specify the amount of its capital stock paid in, and secured to be paid in ; the amount paid by such company for real estate, then belonging to such company, wherever the same may be situated, the amount of all surplus profits or reserved funds, exceeding ten per cent of their capital after deducting therefrom the said amount of

TITLE 4.

said real estate, and the amount of its stock, if any, belonging to the state, and to incorporated literary and charitable institutions.

(416) 2. In the second column, they shall enter the quantity of real estate owned by such company, and situated within their town or ward; and in the third column, the actual value thereof, estimated as in other cases.

3. In the fourth column, they shall enter the amount of the capital stock of every incorporated company, paid in, and secured to be paid in, and of all surplus profits or reserved funds as aforesaid; after deducting the sums paid out for all the real estate of such company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of this state, and to incorporated literary and charitable institutions.

Laws of 1853, ch. 654; 21 N. Y., 451; 12 B., 223; 1 B. Ch., 449; 7 H., 261; 4 Pal., 401, 394.

Preceding
section
extended.

§ 8. The provisions of the fifteenth section of the second Title of this Chapter, shall be, and are hereby extended to the incorporated companies in the two preceding sections named; and the president, secretary, or other proper officer, may make the affidavit required by said section.

SEC. 9, 10, & 14, repealed by Laws of 1857, ch. 456, and § 7, 11, 12, 13, repealed by Laws of 1853, ch. 654.

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Taxes to be
stated and
collected.

§ 15. The amount of taxes assessed on all incorporated companies liable to taxation, shall be set down by the board of supervisors, in the fifth column of the corrected assessment roll, and shall form a part of the monies to be collected by the collector.

Laws of 1857, ch. 456.

Duty of
supervi
sors.

§ 16. The board of supervisors having completed the assessment, shall transmit to the comptroller, with the aggregate valuations of the real and personal estate in their county, a statement, showing the names of the several incorporated companies liable to taxation in such county; the amount of the capital stock paid in, and secured to be paid in, by each; the amount of real and personal property of each, as put down by the assessors, or by them; and the amount of taxes assessed on each. In those counties in which there is no such company, the boards of supervisors shall certify such fact to the comptroller, with their returns of the aggregate valuations of real and personal estate.

Duty of
collector.

§ 17. The collector shall demand payment of all taxes assessed on incorporated companies, from the president, or other proper officer, of such companies, and if not paid, shall proceed in the collection and payment thereof, in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of monies collected by him. And the collector's receipt shall be evidence of the payment of such tax.

TITLE 4.
Taxes how
paid.

§ 18. Such taxes shall be paid out of the funds of the company, and shall be rateably deducted from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared.

See Laws of 1845, ch. 195, § 1.

§ 19. If the collector shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the county treasurer, and at the same time, make affidavit before the county treasurer, or some other officer authorised to administer oaths, that he had demanded payment thereof from the president, or other proper officer of the company, and that such officer had refused to pay the same, or that he had not been able to make such demand, as the case may be; and that such company had no personal property, from which he could levy such tax.

Proceedings if
taxes can-
not be col-
lected.

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§ 20. The county treasurer shall thereupon certify such facts to the comptroller, who shall pass to the credit of such county treasurer the amount of all taxes so returned and certified, as in the cases of taxes on the lands of non-residents.

§ 21. The comptroller shall furnish the attorney-general, with the names of all companies and banks refusing or neglecting to pay the taxes imposed on them, with the amount due from them respectively; and the attorney-general shall thereupon file a petition in the supreme court, against every such company, or bank, for the discovery and sequestration of its property.

Attorney-
general to
file bill in
chancery.

Laws of 1857, ch. 456.

§ 22. The chancellor, on the filing of such bill, or on the coming in of the answer thereto, shall order such part of the property of such company to be sequestered, as he shall deem necessary for the purpose of satisfying the taxes in arrear, with the costs of prosecution; and he may also, at his discretion, enjoin such company, and the officers thereof, from any further proceedings under their act of incorporation, and may order and direct such other proceedings, as he shall deem necessary, to compel the payment of such tax and costs.

Powers of
chancellor

§ 23. The attorney-general may also recover such tax, with costs, from such delinquent company, by action in any court of record in this state.

Further
remedy.

By Laws of 1857, ch. 536; the 23 sections of this Title are declared inapplicable to rail road corporations, and the following sections 24, 25, 26, 27, and 28, were added to this Title.

§ 24. It shall be the duty of every rail road corporation of this state, to deliver, on or before the first day of May, in each year, to the assessors of each town or ward into which any part of their road shall run, or in which they own or are in possession of real estate, a classified list of all real estate owned, or in possession of said company, in said town or ward, specifying:

Railroad
companies
to furnish
lists.

1. The whole number of acres of land possessed or appro-

TITLE 4.

priated for their use with a valuation affixed to the same; deducting that which passes along or across highways, and such other portions, if any, as are already devoted to public uses and purposes.

2. The whole length of their superstructure, its cost as at present constructed, and present estimated value, naming the per centage of depreciation, if any, and construing "superstructure" to mean the ties, chairs, rails, spikes, frogs and switches; whether such superstructure be laid on land or on artificial foundation.

3. The buildings belonging to the company, or in their possession, describing them by location, with the estimated value, naming the per centage of depreciation, if any.

Laws of 1857, ch. 536.

Effect of the
list.

§ 25. In fixing the valuation of the property of any rail road corporation, the assessors shall regard the list named in the preceding section and its subdivisions, when such list shall be received, as prima facie evidence of the value thereof; but such assessors shall, if they deem needful, for the purpose of testing or altering the valuation thus rendered, avail themselves of other additional evidence under oath, in reference to the completeness of the list, and the affixed valuation of the taxable property of such corporation; but in no case shall it be reduced below the sum stated in the list.

Laws of 1857, ch. 536.

Penalty for
neglect.

§ 26. In case any rail road company shall not, within thirty days after the first day of May in each year furnish the list required by section twenty-four of this title and its subdivisions, they shall be liable to a penalty of two hundred and fifty dollars to be sued for and recovered before any court having jurisdiction thereof, by the assessors of the city, town, or village, where such neglect has occurred for the — of the poor of the same town.

Laws of 1857, ch. 536.

Certain
sections
applicable.

§ 27. Sections six, seven, eight, nine, Title three of said Chapter thirteen, shall apply to rail road corporations, and it shall be the duty of collectors to require the "call" mentioned in section six to be made, either on the treasurer of such corporation or the agent of the nearest station; and in addition to posting up advertisements in three public places, as mentioned in section eight, the collector shall serve a like written notice as to time and place on the treasurer or agent, as aforesaid.

Laws of 1857, ch. 536.

Repealing
clause.

§ 28. All provisions of law in regard to taxing rail road corporations inconsistent with this act, are hereby repealed.

Laws of 1857, ch. 536. See Laws of 1853, ch. 654, ch. 469.

TITLE V.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

- SEC. 1. Town and city clerks to return names of assessors and collectors.
 2. Delinquent town clerks and assessors to be reported.
 3. Bonds, notes, &c. sent for collection, not to be taxed.
 4. When tenant paying tax, may sue therefor or retain out of rent.
 5. Losses sustained by default of collector or treasurer, on whom chargeable.
 6. Comptroller to cancel erroneous charges of U. S. direct tax.
 7, 8 & 9. Proceedings to insure correct returns.
 10. Certificates and conveyances, may be recorded, &c.
 11. Sales of lands for taxes for opening roads, how to be made.
 12 & 13. Comptroller to send forms, &c. to county treasurers.
 14. Comptroller to cause this Chapter to be printed and distributed.
 15. Punishment for neglecting the execution of this Chapter.

§ 1. The clerks of the cities of New-York, Albany, Hudson, Schenectady and Troy, and the town clerks of the several towns, shall yearly, before the first day of October, in each year, certify and deliver to the supervisors of their respective towns, the names of all the assessors and collectors in their respective cities and towns, and the same shall be delivered to the board of supervisors, at their next meeting. Duty of town and city clerks. [419]

§ 2. The boards of supervisors of the several counties, at every annual meeting, shall transmit to the comptroller the names and places of abode of the town clerks and assessors, in their respective counties, who shall have wilfully refused or neglected to perform the duties required of them in this Chapter; and the comptroller shall thereupon give notice to the district attorneys of the proper counties, to the end that they may prosecute such delinquent town clerks and assessors, for the penalties incurred by them. Duty of board of supervisors.

§ 3. When any bond, mortgage, note, contract, account or other demand, belonging to any person not being a resident of this state, shall be sent to this state for collection, or shall be deposited in this state for the same purpose, such property shall be exempt from taxation; and nothing contained in this Chapter shall be construed to render any agent of such owner liable to be assessed or taxed for such property; but every such agent shall be entitled to have any such property deducted from his assessment, upon making affidavit, before the assessors at the time appointed by them for reviewing their assessments, that such property belongs to a non-resident owner, and therein specifying his name and residence. Bonds, &c., sent to this state for collection, not to be taxed.

Act concerning the Revised Statutes, passed Dec. 10, 1828, § 17.

§ 4. When the tax on any real estate shall have been collected of any occupant or tenant, and any other person, by agreement, or otherwise, ought to pay such tax, or any part thereof, such occupant, or tenant, shall be entitled to recover, by action, the amount which such person ought to have paid; or to retain the same from any rent due, or accruing from him to such person, for the land so taxed. Remedy of tenant for taxes paid.

§ 5. All losses which may be sustained by the default of Losses by collectors

TITLE A.
or county
treasurer.

the collector of any town or ward, shall be chargeable on such town or ward. All losses which may be sustained by the default of the treasurer of any county, in the discharge of the duties imposed by this Chapter, shall be chargeable on such county. And the several boards of supervisors shall add such losses, to the next year's taxes of such town or county.

Sales for U.
S. direct
tax.

§ 6. Whenever it shall appear to the comptroller, that any charge of arrears of the direct tax of the United States, returned to his office as unpaid, has been paid to any of the collectors of that tax, or that the same lands have been twice charged with the same tax, he shall cancel the erroneous charge on the books of his office.

Comptrol-
ler may
require
correct
returns.

[490]

§ 7. If, in consequence of having received irregular and imperfect descriptions of the lands of non-residents in any town, the comptroller shall apprehend that irregular or imperfect returns may again be received, he may give notice of such apprehension to the board of supervisors of the proper county, at their annual meeting, specifying the several towns in such county, the returns from which will probably require correction.

Duty of
super-
visors there-
upon.

§ 8. It shall be the duty of such board of supervisors to require the assessors and the collector of such town, specified in the notice of the comptroller, to meet in such town at such place as shall be designated by the supervisors, within thirty days of the expiration of the time, when the collectors are to make their returns to the county treasurers.

Of asses-
sors and
collectors.

§ 9. It shall be the duty of the assessors and collectors to meet pursuant to such requisition. The collectors shall specify to the assessors, the several lots to be returned as non-resident property, by reason of the non-payment of the taxes; and the assessors shall arrange the same according to the provisions of this Chapter, and shall examine the descriptions of the lots; and in case any of them are found erroneous and imperfect, they shall correct the same, conformable to such instructions as may have been received from the comptroller, and the collector shall thereupon return the lots as arranged and described by the assessors, to the county treasurer.

Comptrol-
ler's certifi-
cate or
deed.

§ 10. Every certificate or conveyance executed by the comptroller in pursuance of the provisions of this Chapter, may be recorded in the same manner, and with the like effect, as a deed regularly acknowledged or proved, before any officer authorized by law, to take the proof and acknowledgment of deeds.

Sales for
taxes for
opening
roads.

§ 11. All sales of lands charged with taxes in arrear for opening and improving roads within this state, shall be conducted in the manner herein before prescribed; and the owners of the lands sold, shall be allowed to redeem within the same time, and on the same conditions.

Blank
forms and
instruc-
tions.

§ 12. The comptroller shall, from time to time, at his discretion, transmit blank forms of assessment rolls, and of returns of unpaid taxes, to the several county treasurers in this state;

together with such instructions as he shall think useful, for the purpose of enforcing the uniform and proper execution of this Chapter.

§ 13. The county treasurers shall distribute such of the said forms and instructions, as shall have been intended for the use of assessors, among the town clerks, in their respective counties, who shall deliver the same to the assessors in their respective towns. The county treasurer shall also transmit or deliver a copy of such forms and instructions to each of the assessors in any city in his county. Distribution thereof.

§ 14. The comptroller shall, from time to time, whenever he shall find it to be necessary, cause to be printed, at the expense of this state, a sufficient number of copies of this Chapter, to furnish one copy to each county treasurer, supervisor, town clerk, assessor and collector within this state; and shall transmit to each county treasurer a sufficient number for his county. Copies of this chapter. [491] Every county treasurer receiving such copies, shall immediately transmit, at the expense of the county, to the clerk of each town therein, five copies, to be distributed by him among the officers entitled thereto; and he shall also transmit or deliver one such copy to each assessor and collector, in every city in his county.

§ 15. If any of the officers concerned in the execution of this Chapter, shall wilfully neglect or refuse to perform the duties assigned them, such officer shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, in the discretion of the court. Officers guilty of neglect of duty.

See Laws of 1843, ch. 179; 1836, ch. 117; 1828, ch. 11, of the second session; 1853, ch. 195; 1855, ch. 548.

TITLE VI.

SPECIAL AND LOCAL PROVISIONS.

Sec. 1, 2 & 3. Special provisions concerning taxes, in Kings county.

4, 5 & 6. Special provisions concerning taxes in Albany.

7. Collectors of certain towns in Essex county, to receive mileage.

8. Certain cities to be deemed towns under this Chapter

§ 1. The assessors of the several towns in the county of Kings, shall complete their assessment rolls, on or before the first day of July, in each year; and shall deliver the same, on or before the first day of August, in each year, to the supervisors of their respective towns. Kings county.

§ 2. The board of supervisors of the county of Kings, shall deliver their warrants and tax lists to the collectors of the several towns in that county, on or before the first Tuesday of September, in each year; and the collectors shall settle their accounts with the county treasurer, on or before the first Tuesday in November, in each year.

§ 3. The town clerks of the several towns in the county of Kings, shall certify and deliver to the supervisors of their respective towns, between the first Tuesday of May and the

TITLE 6.

Time for
collecting
taxes in
Albany.

first Tuesday of August, in each year, the names of all the assessors and collectors in their respective towns.

§ 4. The time for the collection of taxes in the city and county of Albany, shall be and is hereby extended to the first day of March in every year; and the warrants to the collectors of the several towns and wards of the said city and county, shall be conformed to this provision.

Act concerning Revised Statutes, passed Dec. 10, 1828, § 21.

Collectors
in Albany.

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§ 5. If any collector, chosen or appointed for any of the wards in the city of Albany, shall, after such election or appointment, die, resign, or remove out of the said city before he shall have entered upon, or completed the duties of his office, or if he shall, by reason of sickness, or other cause, be disabled from performing and completing such duties, it shall, in every such case, be the duty of the mayor, aldermen and commonalty of said city, to appoint a collector for such ward, for the remainder of the year; who thereupon shall have the same powers and privileges, be subject to the like duties and penalties, and entitled to the same compensation, as the collector in whose place he was so appointed.

Th.

§ 6. It shall be the duty of such collector, so to be appointed, before he shall enter on the duties of his office, to enter into a bond with the like penalty, and subject to the same condition, as other collectors are required to enter into by law.

Mileage
allowed to
collectors
in Essex.

§ 7. It shall be the duty of the treasurer of the county of Essex, on the settlement of the accounts of the several collectors of the towns of Minerva, Keene, and Schroon, to allow and pay them mileage, to be calculated for every mile necessarily travelled from their respective dwellings, to the office of the treasurer, after the following rates:

1. To the collector of the town of Minerva, thirty-seven and a half cents per mile:
2. To the collectors of the towns of Keene and Schroon, twenty-five cents per mile:

But the sum to be paid to either of the said collectors, shall in no case exceed the sum of four per cent. upon the amount of the tax on the lands of non-residents, returned by such collector to the county treasurer.

What cities
deemed
towns.

§ 8. Every city not divided into wards, for the purpose of choosing supervisors and assessors, shall be deemed to be a town within the provisions of this Chapter.

This Title has been modified by several acts which repeal so much as is inconsistent with them. See Laws of 1831, ch. 124; 1840, ch. 369; 1838, ch. 206; 1841, ch. 154. See Laws of 1833, ch. 250, as to tax on non-residents.

CHAP. XIV.**Of the Public Health.**

(Took effect 1st January, 1893.)

TITLE 1. — Of the officers of health in the city of New-York.**TITLE 2.** — Of quarantine, and regulations in the nature of quarantine, at the port of New-York.**TITLE 3.** — Internal regulations for the preservation of the public health in the city of New-York.**TITLE 4.** — Of the marine hospital, and its funds.**TITLE 5.** — General provisions applicable to the city of New-York.**TITLE 6.** — Regulations for the preservation of public health in other ports and places of the state.**TITLE 7.** — General regulations concerning the practice of physic and surgery in this state.**TITLE I.**

[423]

OF THE OFFICERS OF HEALTH IN THE CITY OF NEW-YORK.**SEC. 1 & 2.** Board of health; president and members how appointed, &c.

3. Who commissioners of health.

4 & 5. Duties of health officer; power to appoint assistant.

6 to 11. Duties of resident physician and health commissioner.

12 & 13. Salaries and fees of commissioners of health and health officers.

14. Consulting physicians, how appointed, and duties.

15 & 16. Inspectors of health how appointed; their fees and duties.

§ 1. There shall continue to be a Board of Health in the city of New-York, of which the mayor shall by right of office be president, and the members of which shall, from time to time, be appointed by the common council of the city.

Board of Health.

This Chapter was compiled, with various alterations, and additions, from the following statutes: Laws of 1823, 64; 1824, 18, § 2; 1827, 139, § 24 to 33; 10 N. Y., 409.

§ 2. In case the mayor shall, from any cause, be unable to attend to the discharge of his duties as a health officer, the board of health may choose one of their own number as president, who shall possess all the powers and perform all the duties of the mayor under this Chapter.

Id.

§ 3. The health officer, resident physician, and health commissioner of the city, shall be the commissioners of health.

Commissioners of health.

§ 4. The health officer shall perform all the duties hereafter specified in this Chapter, and such other duties as the board or commissioners of health shall lawfully require.

Health officer.

§ 5. The health officer may appoint an assistant, for whose conduct he shall be responsible, and who may perform all the duties required of the health officer. Such assistant, before he shall enter on the duties of his office, shall take the oath prescribed in the constitution of this state.

His assistant.

See Laws of 1839, ch. 359 forming a board of appeal.

§ 6. The resident physician shall visit all sick persons reported to the mayor, or to the board or commissioners of

Resident physician.

TITLE I.

health, and shall perform such other duties as the board of health shall enjoin.

Health commissioner.

§ 7. The health commissioner, under the direction of the board of health, shall assist the resident physician in the discharge of his official duties.

1b. to give bond.

§ 8. He shall also receive all monies appropriated to the use of the marine hospital, and shall pay all demands against the hospital that shall be approved by a majority of the commissioners of health; and before he shall enter on the duties of his office, shall execute a bond in the penal sum of twenty thousand dollars, conditioned for the faithful performance of his trust, and with such sureties as the mayor or recorder of the city shall approve. The bond shall be given to the people of this state, and be filed by the officer taking it, in the office of the clerk of the city and county.

Laws of 1840, ch. 19.

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To account and deposit monies.

§ 9. He shall render to the board of health, a monthly account of his receipts and disbursements on account of the marine hospital, and shall deposit the balance that shall appear to be in his hands, in such bank in the city of New-York, as the board shall designate, to the credit of the commissioners of health.

Monies how drawn.

§ 10. The monies so deposited shall not be drawn out, except on the check of the health commissioner, countersigned by the president of the board of health.

Meetings of physicians and commissioners.

§ 11. In the discharge of their duties, the resident physician and health commissioner, shall meet daily at the office of the board of health, during such part of the year and at such hours of the day, as the board shall designate.

Their salaries.

§ 12. The resident physician shall receive an annual salary of twelve hundred and fifty dollars to be paid out of the monies appropriated for the use of the marine hospital.

Laws of 1844, ch. 316.

Fees of health officers.

§ 13. The health officer shall be entitled to receive the following fees for visiting and examining vessels in the discharge of his official duties:

1. For each vessel from a foreign port, six dollars and fifty cents.

2. For each vessel from a place in the United States south of Cape Henlopen, if above one hundred and sixty tons, three dollars; if not exceeding one hundred and sixty, and above one hundred tons, two dollars; if below one hundred tons, one dollar.

And such fees shall be paid by the respective masters of the vessels so visited and examined.

Consulting physician.

§ 14. The board of health may, from time to time, appoint so many consulting physicians as they may deem necessary, designate their duties, and fix their compensation.

Inspector of vessels.

§ 15. The board of health shall appoint an inspector of vessels, who shall perform the duties required of him in this Chapter, and shall be entitled to receive the following fees:

For each cargo inspected by him under the direction of the board of health, three dollars;

For each vessel cleansed and purified by him under the like direction, five dollars;

Which fees shall be paid by the owner or consignee of the cargo inspected or vessel purified.

§ 16. It shall be the duty of such inspector, after he shall have performed any service required of him, to make an immediate report of his proceedings and their result, to the board of health, or the mayor and commissioners of health.

See Laws of 1850, ch. 275, which enact a new health law for New York and repeal all "acts inconsistent," &c.

ART. 2.
His fees.

His duty.

TITLE II.

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OF QUARANTINE AND REGULATIONS IN THE NATURE OF QUARANTINE, AT THE PORT OF NEW-YORK.

ART. 1. — Of the place of quarantine, and the vessels and persons subject thereto.*

ART. 2. — Of the duties of pilots in relation to vessels subject to quarantine.

ART. 3. — Regulations concerning the treatment, conduct and duties of vessels, articles and persons under quarantine.*

ART. 4. — Regulations concerning the treatment and conduct of vessels, articles and persons released from quarantine, or exempt therefrom.*

ART. 5. — Of the regulation of intercourse with infected places.

ART. 6. — Penalties for violating the provisions of this Title.*

(*Articles 1, 3, 4, 6 were repealed by Laws of 1846, ch. 300, and a new system of quarantine substituted, but not made a part of the Revised Statutes. The act of 1846 was repealed by Laws of 1850, ch. 275, without reviving the Revised Statutes.)

ARTICLE SECOND.

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OF THE DUTIES OF PILOTS IN RELATION TO VESSELS SUBJECT TO QUARANTINE.

SEC. 14. To hail vessels.

15. When to direct them to proceed to quarantine.

16. Duties in conducting vessels into port.

§ 14. It shall be the duty of each branch and deputy pilot belonging to the port, to use his utmost endeavours to hail every vessel which he shall discover to be entering the port, and to demand of the master of every such vessel, whether any person has died or been sick on board, during the passage, and whether any pestilential fever existed, at the time of her sailing, at the port whence she sailed.

§ 15. If any of the above questions shall be answered in the affirmative, the pilot shall immediately give notice to the master of the vessel, that he, his vessel, crew, passengers and cargo, are subject to the examination of the health officer; and shall direct him to proceed and anchor his vessel at the quarantine anchorage, there to await the further directions of the health officer.

§ 16. It shall be the duty of every pilot who shall conduct into port a vessel subject to quarantine,

1. To bring such vessel to anchor within the buoys marking the quarantine anchorage.

To hail vessels.

Further duty.

[428]

To bring vessels into port.

TITLE 2

2. To prevent any vessel or boat from coming along side of the vessel under his charge, and to prevent any thing on board from being thrown into any other vessel or boat.

3. To present to the master of the vessel a printed copy of this Chapter, when such copy shall have been delivered to him for that purpose.

4. To take care that no violations of this Chapter be committed by any person on board, and to report such as may be committed, as soon as may be, to the health officer.

Ch. 275 of Laws of 1850 contains three sections almost identical with this article; but this article is repealed only so far as it is inconsistent with that act.

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ARTICLE FIFTH.

OF THE REGULATION OF INTERCOURSE WITH INFECTED PLACES.

SEC. 64. Proclamation of infected places.

65. Period for its ceasing to be fixed; may be extended.

66. Vessels arriving after proclamation, subject to quarantine.

67. Board of health may regulate intercourse with infected place.

Proclama-
tion of
infected
places.

§ 64. The mayor of the city of New-York, or the president, at the time, of the board of health, may issue his proclamation, declaring any place where there shall be reason to believe a pestilential or infectious fever actually exists, to be an infected place within the meaning of the health laws of this state.

Id.

§ 65. Such proclamation shall fix the period when it shall cease to have effect; but such period, if they shall judge the public health to require it, may from time to time be extended by the board of health, and notice of such extension shall be published in one or more of the newspapers of the city.

Conse-
quence of.

§ 66. After such proclamation shall have been issued, all vessels arriving in the port of New-York from such infected place, shall be subject to a quarantine of at least thirty days, and, together with their officers, crews, passengers and cargoes, to all the provisions, regulations and penalties of this Chapter, in relation to vessels subject to a similar quarantine.

Powers of
board of
health.

§ 67. The board of health may, in their discretion, prohibit or regulate the internal intercourse by land or water, between the city of New-York and such infected place; and may direct, that all persons who shall come into the city of New-York, contrary to their prohibitions or regulations, shall be apprehended and conveyed to the vessel or place whence they last came; or if sick, that they be conveyed to the marine hospital, or such other place as the board of health shall direct.

Ch. 275 of Laws of 1850, contains an Article and four sections identical with this Article, but this is not repealed, except as it is "inconsistent."

TITLE III.**INTERNAL REGULATIONS FOR THE PRESERVATION OF THE
PUBLIC HEALTH IN THE CITY OF NEW-YORK.**

ART. 1. — Of certain duties and powers of the board of health, the mayor and commissioners of health.

ART. 2. — Of the duties of physicians and other persons.

ART. 3. — Prohibitions and penalties.

Ch. 275 of Laws of 1850 contains a Title with three Articles almost identical with this Title, but this Title is not repealed except as it is "inconsistent."

ARTICLE FIRST.**OF CERTAIN DUTIES AND POWERS OF THE BOARD OF HEALTH, THE
MAYOR AND COMMISSIONERS OF HEALTH.**

SEC. 1. General powers of the board of health.

2. Its duty in the prevention of diseases.

3. Any thing injurious to public health may be removed or destroyed.

4. May send non-residents to marine hospital.

5. Commissioners must communicate all reports and information.

§ 1. The board of health shall have power,

Power of
the board
of health.

1. To appoint from time to time so many health wardens and other officers to carry into effect the provisions of this Title, and the rules and regulations of the board, as they may deem necessary :

2. To authorize such officers, at such times as the board shall think fit, to enter into and examine in the day time, all buildings, lots and places of every description, within the city, and to ascertain and report to the board the condition thereof, so far as the public health may be affected thereby :

3. To give all such directions and adopt all such measures, as in their judgment may be necessary, for cleansing and purifying all such buildings, lots and other places ; and to do or cause to be done every thing in relation thereto, which in their opinion may be proper to preserve the health of the city :

4. To cause any avenue, street, alley or other passage whatever, to be fenced up, or otherwise enclosed, if they shall think the public safety to require it, and to adopt suitable measures for preventing all persons from going to any part of the city so enclosed.

§ 2. It shall be the duty of the board of health,

Its duties.

1. To adopt prompt measures to prevent the spreading of a contagious disease, when it shall appear to them by a report of the resident physician or health commissioner, or of a consulting physician, that any person within the city is afflicted with a disease of that character :

2. To forbid and prevent all communications with the house or family so infected, except by means of physicians, nurses or messengers, to carry the necessary advice, medicines and provisions to the afflicted :

3. To adopt such measures for preventing all communication, between any part of the city infected with a fever of a malig-

TITLE 2.

(441)

Putrid
articles,
&c., to be
destroyed.Persons to
be sent to
the marine
hospital.Report to,
board of
health.

nant or contagious character, and all other parts of the city, as shall be prompt and effectual: and,

4. To exercise all such other powers, whenever a contagious disease shall appear in the city, as in their judgment the circumstances of the case and the public good shall require.

§ 3. The board of health, or the mayor and commissioners of health, when they shall judge it necessary, may cause any cargo or part of a cargo, or any matter or thing, within the city, that may be putrid or otherwise dangerous to the public health, to be destroyed or removed; such removal, when ordered, shall be to the quarantine ground, or such other place as the board of health shall direct.

§ 4. The board of health, the mayor or either of the commissioners of health, may send to the marine hospital, or such other place as the board of health shall direct, all persons in the city, not residents thereof, who shall be sick of any malignant or contagious fever.

§ 5. It shall be the duty of the commissioners of health, from time to time, to communicate to the president of the board of health all reports that shall be made to them, or either of them, under the provisions of this Chapter; and it shall be the further duty of the commissioners, and of each of them, so to communicate all information in their power, that may better enable the board of health to preserve the health of the city.

ARTICLE SECOND.

OF THE DUTIES OF PHYSICIANS AND OTHER PERSONS.

SEC. 6. Certain duties of practising physicians; to report patients.

7. Do. of keepers of boarding-houses.

8. Do. of masters, &c. of vessels.

9. Do. of commissioners of health and consulting physicians.

Physicians.

§ 6. It shall be the duty of each practising physician in the city of New-York,

1. To make a report in writing to the mayor, the board of health, or either of the commissioners of health, of every patient he shall have labouring under yellow, bilious-malignant or other pestilential or infectious fever, between the thirty-first day of May and the first day of November in any year, and within twenty-four hours after he shall ascertain or suspect the nature of the disease:

2. To report, if so directed by the board of health, every patient he shall have between the same days, laboring under fever of any description, and to state in his report, the specific name and type of such fever:

3. To report, when required by the board of health, the death of any of his patients who shall have died of fever, within forty-eight hours after such death shall have occurred, and to state in such report, the specific name and type of such fever.

§ 7. Every person keeping a boarding or lodging-house in the city of New-York, between the days mentioned in the preceding section, shall report in writing, to the mayor, the board of health, or either of the health commissioners, the name of every seafaring man, boarder, or passenger by sea, who shall be sick in his house with fever, within twelve hours after each case of sickness shall have occurred.

ART. 2.
Keepers of
boarding-
houses.
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§ 8. Every master, owner or consignee of a vessel lying at a wharf, or in the harbor of the city of New-York, shall make a like report, and within the same period, of the name of every sick person on board such vessel; and no such person shall be removed therefrom, without a written permit for that purpose from the mayor, the board, or one of the commissioners of health.

Masters,
&c., of
vessels.

§ 9. It shall be the duty of each commissioner of health and of each consulting physician, to make an immediate report to the board of health, of the name of every practising physician by whom he shall have reason to believe the provisions of the sixth section of this Title have been violated; and if any such commissioner or consulting physician shall neglect or refuse to perform his duty, the board of health shall suspend him from his office.

Proceed-
ings for
neglect.

ARTICLE THIRD.

PROHIBITIONS AND PENALTIES.

Sec. 10. Respecting salted provisions.

11. Relative to pickled beef, &c.
12. Not to apply to small dealers, &c.
13. All salted provisions, &c., to be reported to mayor.
14. Board of health may cause such articles to be removed.
15. Expense of removal to be paid by owner.
16. Butchers and heads of families excepted.
17. Violation of these provisions, misdemeanor, &c.
18. Rags, hides and skins, not to be taken within certain bounds.
19. Exception as to small quantities.
20. Master or owner to report damaged cotton.
21. Under penalty of five hundred dollars.
22. Persons violating sections one and two, guilty of misdemeanor, &c.
23. Practising physicians violating duties imposed, guilty of misdemeanor, &c.
24. Do. as to keepers of boarding-houses.

§ 10. No salted provisions shall be packed or repacked at any season of the year, in that part of the city of New-York, lying south of a line drawn from the Hudson river through the centre of Canal-street to Sullivan-street, through Sullivan-street to Grand-street, through Grand-street to Walnut-street, and through Walnut-street to the East river.

Salted pro-
visions.

§ 11. From the first day of May to the first day of October in any year, no salted or pickled beef, pork or fish, except smoked beef, and fish, shall be deposited in the city, south of the line above described.

1b.

§ 12. The last preceding section shall not be construed to prevent retail grocers or other small dealers from keeping on

Exceptions.

TITLE 2.
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hand, for the use of their customers, small quantities, not exceeding five barrels of each kind of the provisions therein mentioned, if the provisions so kept be sound and in good order.

To be reported.

§ 13. All salted or pickled provisions, and all hides, skins and cotton, that shall remain deposited in the city, south of the line described in the tenth section of this Title, on the first day of June in any year, shall be reported by the owner or person having charge thereof, to the mayor, the board, or one of the commissioners of health, that the same may be examined, and if necessary, destroyed or removed.

How removed.

§ 14. If such articles, when ordered to be removed by the board of health, shall not be forthwith removed by the owner or person having charge thereof, the board of health shall cause them to be removed to some safe place, there to remain at the risk of the owner.

Expenses.

§ 15. The expense of the removal and subsequent storage of such articles, shall be borne by the owner or person having charge thereof when removed, and if paid in the first instance by the board of health, may be recovered by them in an action against such owner or bailee, or if payment of such expenses be refused by the owner or bailee, the board may cause such articles to be sold, and account for the proceeds, deducting such expenses and the costs of sale.

Exceptions.

§ 16. Nothing contained in this Article shall be construed to extend to provisions exposed for sale by butchers in the public markets, or kept by the heads of families for family use.

Penalties.

§ 17. Every person who shall refuse or neglect to obey the directions of this Article, or of the board of health, pursuant thereto, in relation to the provisions and other articles above mentioned, shall be considered guilty of a misdemeanor, and on conviction, shall be fined for each offence in a sum not exceeding five hundred dollars, or be imprisoned for a term not exceeding six months.

Rags, hides and skins, to be kept within certain bounds.

§ 18. No rags, hides or skins, arriving in the port of New-York, between the thirty-first day of May and the first day of October in any year, shall be taken to any place in the city, south of a line beginning at Spring street on the North river; thence along that street to the Bowery; thence down the Bowery to Grand-street; and thence through Grand-street to Walnut-street; and thence through Walnut-street to the East river; and all such articles brought into the city contrary to the above provision, may be seized and sold by the commissioners of health, for the use of the marine hospital.

Exceptions.

§ 19. The board of health or the mayor and commissioners of health, may however permit sound hides and skins to be brought into the city, south of the line last described, in small quantities, and for the purpose of immediate manufacture, but not otherwise.

§ 20. It shall be the duty of the master and owner of every vessel that shall have brought cotton into the city, between the first day of May and the first day of November, in any year, and of the owner and consignee of such cotton, if upon examination, it shall appear damaged or otherwise unsound, to make an immediate report thereof to the mayor and commissioners of health.

TITLE 4.
[444]
Damaged
cotton to
be reported.

§ 21. Every master or owner or consignee, refusing or neglecting to perform the duties so enjoined, shall, for each offence, forfeit to the commissioners of health, the sum of five hundred dollars.

Penalty for
neglect.

§ 22. Every person who shall violate any order or direction of the board of health, made or given in the exercise of the powers vested in them by the first and second sections of this Title, shall be considered guilty of a misdemeanor, punishable by fine and imprisonment.

Disobeying
order of
board of
health.

§ 23. Every practising physician, who shall refuse or neglect to perform the duties enjoined on him in the sixth section of this Title, shall be considered guilty of a misdemeanor, and shall forfeit for each offence, the sum of two hundred and fifty dollars, to be sued for and recovered by the board of health.

Penalty on
physician.

§ 24. Every keeper of a boarding or lodging-house, and every master, owner or consignee of a vessel, who shall refuse or neglect to obey the directions of the seventh and eighth sections of this Title, shall be considered guilty of a misdemeanor, and on conviction shall be fined, for each offence, in a sum not exceeding two hundred and fifty dollars, or be imprisoned for a term not exceeding six months.

Penalty on
keepers of
boarding-
houses.

See Laws of 1850, ch. 275.

TITLE IV.

OF THE MARINE HOSPITAL AND ITS FUNDS.

- Sec.** 1. The marine hospital held by commissioners of health.
2. Commissioners have the superintendence.
3. Commissioner to furnish boat for health officer.
4. Care of sick persons; not to be removed without permit.
5. Persons eloping may be apprehended.
6. Expenses to be paid, by whom, and who not liable therefor.
7. (Repealed.)
8. Hospital money how applied; commission for health commissioner.
9. From whom master may recover monies.
10. Monies payable by masters of coasting vessels.
11. Commissioners must account to comptroller; use of surplus.
12. Sums necessary to keep buildings in repair.

§ 1. The hospital erected on the easterly shore of Staten-Island, and the land adjoining thereto, belonging to the state, shall continue to be denominated "the Marine Hospital," and shall, together with all buildings and improvements, made or to be made thereon, be held by the commissioners of health, in trust for the people of this state, for the purposes specified in this Chapter.

Hospital by
whom held.

TITLE 4
(445)
Control thereof.

§ 2. The health officer shall, by right of office, be physician of such hospital, and the commissioners of health shall, in all other respects, have the superintendence thereof; make rules and orders for its government and management, employ mates, nurses and attendants therefor, and provide bedding, clothing, fuel, provisions, medicine, and such other articles as shall be requisite therein.

Boat.

§ 3. The commissioners of health shall, at all times furnish a convenient boat with sufficient boatmen, for the use of the health officer, the expense of which shall be charged to the funds of the hospital.

Sick persons how kept, &c.

§ 4. Every sick person sent to the marine hospital, shall be there kept and attended to, with all necessary and proper care; and no such person shall leave the hospital, until the health officer shall grant a discharge in writing.

Proceedings against those eloping.

§ 5. The health officer may direct, in writing, any constable or other citizen to pursue and apprehend any person, not discharged, who shall elope from the hospital, and to deliver such person at the hospital, to be there detained until regularly discharged. It shall be the duty of the constable, or citizen so directed, to obey such directions; and every person who shall so elope shall be considered guilty of a misdemeanor, punishable by fine or imprisonment.

Expenses by whom to be paid.

§ 6. All persons sent to the marine hospital, or any other hospital provided by the board of health, other than those who shall have paid hospital money, and such poor persons as the board of health shall exempt, shall pay a reasonable sum for their board, medicine and attendance; and for the recovery of such sum, the commissioners of health may sue in their name of office.

SEC. 7. Repealed by Laws of 1849, ch. 350, § 16.

How applied.

§ 8. The monies so received, shall be denominated "hospital monies," and shall be appropriated to the use of the marine hospital, deducting a commission to the health commissioner of two and one half per cent for collection.

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How recovered by masters.

§ 9. Each master paying hospital monies, shall be entitled to demand and recover, from each person for whom they shall be paid, the sum paid on his account.

Coasting vessels when to pay.

§ 10. Every master of a coasting vessel, shall pay to the health commissioner, at his office, in the city of New-York, within twenty-four hours after the arrival of his vessel in the port, such hospital monies as shall then be demandable from him, under the provisions of this Title; and every master, for each omission of such duty, shall forfeit the sum of one hundred dollars.

Accounts; surplus.

§ 11. The commissioners of health shall account annually to the comptroller, for all monies received by them, or either of them, for the use of the marine hospital; and if such monies shall, in any one year, exceed the sum necessary to defray the expenses of their trust, including their own salaries, and exclusive of such expenses as are to be borne and paid as

TITLE E.

a part of the contingent charges of the city of New-York, they shall pay over such surplus to the treasurer of the society for the reformation of Juvenile delinquents in the city of New-York, for the use of that society.

§ 12. The sums necessary to keep the buildings and improvements of the marine hospital in good repair, shall be charged as a part of its annual expenses; and the balance of hospital monies, now or hereafter in the hands of the commissioners of health, whether invested in stock, or otherwise, shall remain appropriated to supply any deficiency that may occur, of the annual funds, to meet the annual expenses of the hospital, and to defray the expenses of erecting such other hospitals, or buildings, as the governor shall, from time to time, direct; and no sale of stock shall be made by the commissioners, except by the order of the governor.

Charges on fund; balances on hand.

See Laws of 1844, ch. 316; 1829, ch. 302; 1843, ch. 52; 1831, ch. 234; 1840, ch. 315; 1847, ch. 483.

TITLE V.

GENERAL PROVISIONS APPLICABLE TO THE CITY OF NEW-YORK.

Sec. 1. Limited provisions may be extended by proclamation.

2. Proclamation may be revoked.

3. To whom fines, &c. payable, and how to be applied.

4. Commissioners to give information of offences.

5. Suits not to abate on death of officers.

6. Provisions of Chapter, how far to extend; not to interfere with common law.

7. Board of health to cause parts of this Chapter to be distributed.

8. Magistrates to aid board of health.

§ 1. Whenever it shall appear to the board of health, that any provisions of this Chapter, limited in their operations to a certain period of the year, ought to be extended, the mayor of the city shall issue his proclamation, extending such provisions to such time as shall be mentioned in the proclamation; and such provisions shall thereupon be extended accordingly, and with the like effect as if the periods mentioned in the proclamation, had been enacted in this Chapter.

Certain provisions how extended.

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§ 2. If it shall appear to the board of health, whilst such proclamation is still in force, that the necessity of extending the period therein named has ceased, the mayor, by a new proclamation declaring that fact, shall revoke the proclamation first issued, which, from that time, shall cease to have effect.

How revoked.

§ 3. All fines, forfeitures and penalties, imposed in this Chapter, or under the powers delegated therein, shall be paid to the commissioners of health, as a part of the funds of the marine hospital; and such as are recoverable by suit, including the penalties of bonds taken from persons under quarantine, and excepting such as are, or shall be, imposed on physicians, shall be sued for by the commissioners of health, in their name of office.

Penalties how collected; to whom to be paid.

TITLE 2
Information.

§ 4. It shall be the duty of the commissioners of health and of each of them, to give information to the district attorney of the city and county of New-York, of all offences against the provisions of this Chapter, that shall come to their knowledge, that he may prosecute the offenders without delay, in the court of sessions of the city.

Suits not to
abate.

§ 5. No suit that shall be brought by the board or the commissioners of health, or the health officer, in their respective names of office, in pursuance of the authority given in this Chapter, shall abate on account of the death of the officer, or officers, by whom the same shall be commenced.

Extent of
this chap-
ter.

§ 6. The provisions of the previous Titles of this Chapter, shall extend to all diseases, which, in the opinion of the board of health, shall be deemed dangerous to the public health; and nothing in this Chapter contained, shall be construed to interfere with the remedies against nuisances, provided by the common law.

Parts of
this chap-
ter to be
printed and
distributed.

§ 7. The board of health shall, from time to time, cause such parts as they shall deem necessary, of this Chapter, to be printed, and shall deliver the same to the respective pilots of the port, for distribution to the masters of vessels subject to quarantine: the expenses of such printing shall be defrayed out of the monies appropriated for the use of the marine hospital.

All officers,
&c., to aid.

§ 8. It shall be the special duty of all magistrates and civil officers, and of all citizens of the state, to aid to the utmost of their power the board of health, and all the health officers mentioned in this Chapter, in the performance of their respective duties.

Article 4 of Title 3 of ch. 275 of Laws of 1850 is almost identical with this Title, but this Title is not repealed except as it is "inconsistent."

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TITLE VI.*

REGULATIONS FOR THE PRESERVATION OF PUBLIC HEALTH IN OTHER PORTS AND PLACES OF THE STATE.

- SEC. 1. Vessels to perform quarantine in Albany, Troy, and Hudson.
 2. Persons violating provisions, guilty of misdemeanor.
 3. Powers to execute this title.
 4. Health officers in Albany and Hudson, duties; fees.
 5. Board of health in Brooklyn; who president and clerk.
 6. May appoint a health physician.
 7. Duty of health physician.
 8. How vessels subject to quarantine at New-York, permitted to enter Brooklyn.
 9. Master to deliver permit; to whom.
 10. Master violating preceding provisions, guilty of misdemeanor.
 11. Board may order vessels to be removed.
 12. Order to be in writing; by whom signed; how served.
 13. Penalty on persons violating order.
 14. Practising physicians to report patients.
 15. Penalty for not reporting.

* The provisions of this Title have been superseded, though not in terms repealed by subsequent legislation. See laws of 1850, ch. 144, § 24.

SEC. 16. Duties of keepers of boarding-houses at certain period.

17. In same period, sick persons not to enter village.
18. Violation of two last sections, misdemeanor.
19. Certain powers of board of health.
20. Persons violating order of board, guilty of misdemeanor.
21. Fines; to whom paid; how applied.
22. Two justices of any town, may remove sick strangers.

§ 1. No vessel having on board any person infected with any pestilential or infectious disease, or coming from a place so infected, shall enter any other of the ports or harbors of this state, until such quarantine as the persons herein after mentioned shall direct, shall have been performed, namely: for the cities of Albany, Troy, and Hudson, and upon the Hudson river opposite to those cities, and within one mile above and below the same, the mayor, or in his absence, the recorder of those cities respectively.

Quarantine
at Albany,
Troy, and
Hudson.

§ 2. Every person so subject to quarantine, who shall violate any of the regulations to be prescribed respecting the same, shall be considered guilty of a misdemeanor, and shall be fined in a sum not exceeding five hundred dollars.

Penalties.

§ 3. The persons authorised to execute this Title in the cities of Albany, Troy, and Hudson, shall respectively have power,

Powers of
certain
officers.

1. To take such measures as they shall deem effectual to prevent the spreading of any infectious disease:

2. To stop, detain and examine, for that purpose, every person coming from any place infected, or believed to be infected, with such a disease:

3. To cause every such person, whom they shall suspect of being infected with such disease, and who shall not be an inhabitant of this state, to be sent out of the state, or to be kept therein in such manner as not to endanger the public health: and,

4. To appoint such and so many persons to aid them in the execution of their powers, as they shall deem proper.

§ 4. The health officer in each of the cities of Albany and Hudson, shall assist in carrying into effect the provisions of this Title; and from the master of each vessel from a foreign port, that he shall visit and examine, shall be entitled to receive the sum of seven dollars and fifty cents.

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§ 5. The board of trustees of the village of Brooklyn, shall continue to be a board of health for that village. The president, or the president for the time, of the village, shall be the president of the board of health; and the clerk of the board of trustees, shall be the clerk of the board of health, and as such, shall keep regular minutes of all their proceedings.

Board of
health in
Brooklyn.

§ 6. The board of health shall annually appoint, by warrant, under the common seal of the village, a physician, then being an inhabitant of the village, to be the health physician in and for the village of Brooklyn.

Physician.

TITLE 6.
His duty.

§ 7. It shall be the duty of such health physician,

1. To visit all sick persons who shall be reported to the board of health of the village, and to report, without delay, his opinion of the sickness of such persons, to the president of that board :

2. To visit and inspect all vessels coming to the wharves, landing places, or shores, in the village of Brooklyn, and suspected to have on board any pestilential disease, and all stores, or ware-houses, suspected to contain putrid or unsound provisions, damaged hides, cotton, or other articles; and to make report of the condition of such vessels, provisions, or articles, without delay, to the president of the board of health; and,

3. To meet daily, from the first day of June to the first day of October, in each year, at the office of the board of health in the village, with one or more members of the board, for the transaction of business.

Certain
vessels not
to enter
village.

§ 8. No vessel subject to quarantine in the port of New-York, shall proceed beyond the place of quarantine on Staten-Island, to the village of Brooklyn, without a permit from the health officer of the city of New-York.

Duty of
masters.

§ 9. The master of every such vessel arriving in the village of Brooklyn, shall within six hours after such arrival, deliver the permit of the health officer to the president of the board of health of the village, or to such person as he shall direct.

Penalties.

§ 10. Every master who shall violate the provisions of either of the two last preceding sections, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court, by which he shall be tried; the fine for each offence not to exceed two hundred and fifty dollars, nor the imprisonment six months.

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Vessels
when to be
removed.

§ 11. The board of health of the village, whenever in their judgment the public health shall require it, may order any vessel at any wharf, landing place or shore of the village, to be removed at least five hundred yards from the shores of the village, within six hours from the service of such order.

Order how
signed and
served.

§ 12. Every such order shall be in writing, and be signed by the president of the board of health of the village, or in his absence, by a majority of the members of the board; and may be served by a delivery thereof to the person having, at the time, the care or command of the vessel to be removed, or to the master, owner or consignee thereof.

Penalties
for diso-
beying.

§ 13. Every person upon whom such order shall have been duly served, who shall omit to comply with its requisitions, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried; the imprisonment not to exceed six months, nor the fine, for each day the vessel to be removed shall have remained at or near the shores of the village, in violation of the terms of the order, two hundred and fifty dollars.

TITLE 4.
Sick to be
reported.

§ 14. Every practising physician in the village of Brooklyn, shall forthwith make a report in writing, signed by himself, to some one of the board of health of the village, of every patient he shall have, laboring under malignant or yellow fever, or any other pestilential or infectious disease.

Penalty.

§ 15. Every physician who shall omit to make such report, shall forfeit the sum of fifty dollars, and be considered guilty of a misdemeanor.

Keepers of
boarding-
houses to
report.

§ 16. Every keeper of a boarding or lodging-house, in the village of Brooklyn, between the first day of June and the fifteenth day of November in each year, shall report in writing, to some one of the board of health of the village, the name of every seafaring man or traveller who shall be sick in his house, within six hours after each case of sickness shall have occurred.

Sick not to
enter vil-
lage.

§ 17. No sick person, between the days mentioned in the last preceding section, shall be removed from any vessel lying at or near the shores of the village of Brooklyn, or from any other place, into the village, until the name of such person shall have been reported in writing, to some one of the board of health of the village, and a written permit of such removal have been granted by the board.

Penalties.

§ 18. Every person who shall violate the provisions of either of the two last preceding sections, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment; the fine for each offence not to exceed one hundred dollars, nor the imprisonment six months.

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§ 19. The board of health of the village of Brooklyn shall have power,

Powers of
board of
health.

1. To issue their proclamation, prohibiting or regulating the internal intercourse by land or water, between that village, and any other place where they shall have reason to believe, that a pestilential or infectious disease then prevails:

2. In case of the prevalence of any such disease in any part of the village, to enclose and shut up such infected part, so as to prevent all intercourse therewith:

3. To remove to the public hospital of the village, or such other place as they may deem fit, all persons within the village, not being residents thereof, who shall be sick of any pestilential or infectious disease, and all articles and things infected by, or tainted with, pestilential disease: and,

4. To cause any bedding or clothing, or any unsound or putrid articles found within the village, to be destroyed, whenever in their judgment, such destruction shall be necessary to prevent infection.

Penalty for
violating
orders.

§ 20. Every person who shall violate any order, rule, or regulation of the board of health of the village, made in pursuance of the powers granted in the last preceding section, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by whom the offender shall be tried.

TITLE 7.
Fines how
collected
and paid.

§ 21. All fines and forfeitures imposed in any of the preceding sections of this Title, from the fifth section inclusive, shall, when collected, be paid to the board of health of the village of Brooklyn, to be applied by them to the purchase, building or hire, support and maintenance of a public hospital for the village; and such forfeitures as are recoverable by civil suit, shall be sued for by the president of the board of health, in his name of office.

Powers of
justices in
towns.

§ 22. Any two justices of the peace, in any town of this state, may cause all persons who shall be sick of any infectious or pestilential disease, and not being residents of such town, by an order in writing, to be removed to such place of safety within the town, as they shall deem necessary for the preservation of the public health.

TITLE VII.

GENERAL REGULATIONS CONCERNING THE PRACTICE OF PHYSIC AND SURGERY IN THIS STATE.

- Sec. 1. Medical societies to require physicians to apply for admission.
 2. If persons notified do not apply, license to be forfeited.
 3. Charges may be preferred to society against members.
 4. When charges to be delivered to district attorney.
 5. District attorney to serve copy on accused, and give notice of hearing.
 6. He shall conduct prosecution, and issue subpoenas for both parties.
 7. County judges to hear and determine charges.
 8 & 9. Qualifications for admission to an examination.
 10. Certificates of commencing of studies to be filed.
 11. Order specifying period of study, to be annexed.
 12. When regents to grant degrees of doctor of medicine.
 13. In what counties students to be examined.
 14. Candidates rejected in one county, not to be examined in another; may appeal.
 15. Persons rejected by state censors, not to be examined by county censors.
 16. No person to practise without license, &c.
 17. Persons coming from another state, &c. to file copy of diploma.
 18. Certain diplomas not to confer right of practising.
 19. Persons licensed, to deposit copy of license.
 20. Persons under 21, not entitled to practise.
 21. Certain degrees not to be a license; restriction as to faculties of medicine.
 22. Repealed.

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Notice to be
given to
every
physician
and sur-
geon.

§ 1. The president of every county medical society shall give notice in writing, to every physician and surgeon not already admitted into such society, within the county in which the society of which he is president is situated, requiring such physician or surgeon, within sixty days after the service of such notice, to apply for and receive, a certificate of admission, as a member of such society.

This Title was compiled, with some variations and additions, from the following statutes: 2 R. L., 220, § 12, 20 and 21; Laws of 1818, 192; 1819, 308; 1827, 178; 3 W., 426; 1 H., 665.

How
served;
persons
notified to
forfeit their
licenses, if

§ 2. The service of every such notice shall be made personally, on the physician or surgeon, to whom it shall be directed; and if such physician or surgeon shall not, within the time specified in the notice, or within such further time as may be

allowed by the president, under the regulations of the society, apply for a certificate of membership in such society, his license shall be deemed forfeited, and he shall be subject thereafter, to all the provisions and penalties of the laws of this state, in relation to unlicensed physicians, until upon a special application, he shall be admitted a member of the medical society, in the county in which he shall reside.

TITLE 7.
they do not
apply.

§ 3. If there shall be preferred to any county medical society, specific charges against any member thereof, of gross ignorance or misconduct in his profession, or of immoral conduct or habits, a special meeting of the society to consider the charges shall be called, of which at least ten days previous notice shall be given, in one or more of the newspapers printed in the county.

Charges for
misconduct.

1 H., 666; 13 W., 473; 10 W., 449; 24 B., 579.

§ 4. If two-thirds of the members present at such meeting shall be of opinion, that the charges preferred are well founded, the president of the society, shall, without delay, deliver a certified copy of the charges and of the vote of the society thereon, to the district attorney of the county, and shall give notice of such delivery to the member accused, who from that time shall be suspended from the practice of physic and surgery, until the determination of such charges, in the manner herein after provided.

Proceed-
ings
thereon.

§ 5. The district attorney to whom the charges shall be delivered, shall serve a copy thereof without delay, on the member accused, and at the same time shall give him notice, of the time and place at which the judges of the court of common pleas of the county will meet, for the purpose of hearing and determining the same: such notice shall be served at least fourteen days, before the time of hearing appointed.

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Charges to
be served
and notice
of hearing.

31 B., 462.

§ 6. The district attorney shall conduct the prosecution of the charges, and shall issue process to compel the attendance of such witnesses, as the president of the society and the member accused, shall severally require.

District
attorney to
prosecute.

§ 7. The judges of the county court, at the time and place of hearing appointed, or at such other time and place as they shall fix, shall proceed to hear and determine the charges, and shall examine, on oath, the witnesses produced: if they, or a majority of them, shall be satisfied, from the evidence, that the charges are true, they shall make an order, which shall be valid in law, expelling the member accused from the society, and declaring him forever thereafter incapable of practising physic and surgery, within this state; or suspending him from such practice, for a limited period: if they shall be of opinion, that the charges are not established, the suspension of the member accused shall cease, and he shall be restored to all his rights and privileges, as a practising physician and surgeon.

Judges to
determine.

To expel.

Or suspend.

Or acquit.

13 W., 473.

TITLE I.
Qualifications of students.

§ 8. No student shall be admitted to an examination by any medical society, until he shall have completed, with some physician and surgeon, duly authorised by law to practise his profession, the term of medical study, prescribed in the following sections of this Title.

Term of study.

§ 9. The regular term of the study of medical science shall be four years, but a deduction from such term, in no case to exceed one year, shall be made in either of the following cases:

1. If the student, after the age of sixteen, shall have pursued any of the studies usual in the colleges of this state, the period, during which he shall have pursued such studies, shall be deducted:

2. If the student, after the age of sixteen, shall have attended a complete course of all the lectures delivered in an incorporated medical college in this state, or elsewhere, one year shall be deducted.

Certificate.

§ 10. The physician and surgeon with whom a student shall commence his studies, shall file a certificate with the president of the county medical society to which he belongs, certifying that such person has so commenced his studies; and the term of study shall be considered as commencing, from the day on which such certificate is filed.

Order for term of study.

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§ 11. If the term of study shall be intended to be for less than four years, upon either of the grounds mentioned in the ninth section of this Title, the president with whom the certificate shall be filed, upon satisfactory proof that a deduction ought to be allowed, shall annex to such certificate, an order specifying the period, not exceeding one year, which, according to the proof exhibited to him, ought to be deducted from the term of four years, and directing that the term of study of the student shall be for the period that shall remain.

Requisites for diplomas from regents.

§ 12. No person shall receive from the regents of the university a diploma, conferring the degree of doctor of medicine, unless he shall have pursued the study of medical science for at least three years, after the age of sixteen, with some physician and surgeon, duly authorised by law to practice his profession, and shall also, after the same age, have attended two complete courses of all the lectures delivered in an incorporated medical college, and have attended the last of such courses, in the college by which he shall be recommended for his degree.

See Laws of 1840, ch. 366.

In what counties students to be examined.

§ 13. No student who has attended one or more courses of medical lectures shall be admitted to an examination by any medical society, except of the county in which he shall have pursued his medical studies for four months immediately preceding his attendance upon his last course of lectures, or by the censors of the state medical society.

Laws of 1836, ch. 532.

If rejected, to appeal.

§ 14. No person, who shall have been examined by the

censors of any county medical society, as a candidate for the practice of physic and surgery, or either of them, and shall have been rejected on such examination, shall be admitted to an examination, before the censors of any other county medical society; but such person may appeal from the decision of the censors by whom he shall have been examined, to the medical society of the state.

§ 15. No person, who, either upon an original examination or upon an appeal, shall have been rejected by the censors of the state medical society, shall thereafter be admitted to an examination, before the censors of any county medical society.

Persons
rejected by
state
society.

§ 16. No person shall practice physic or surgery, unless he shall have received a license or diploma, for that purpose, from one of the incorporated medical societies in this state, or the degree of doctor of medicine from the regents of the university; or shall have been duly authorised to practice by the laws of some other state or country, and have a diploma from some incorporated college of medicine, or legally incorporated medical society, in such state or country.

Who to
practice
physic.

25 W., 469; 24 W., 22; 15 W., 395; 4 D., 60.

§ 17. No person coming from another country shall practice physic or surgery in this state until he shall have been examined and licensed by the censors of the state medical society; and no person coming from another state shall practice physic or surgery in this state until he shall have filed a copy of his diploma in the office of the clerk of the county where he resides, and until he shall have exhibited to the medical society of that county satisfactory testimonials of his qualifications, or shall have been examined and approved by its censors.

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Persons
from
another
country and
state.

Laws of 1841, ch. 64.

§ 18. No diploma, granted by any authority out of this state, to an individual who shall have pursued his studies in any medical school within this state, not incorporated and organized under its laws, shall confer on such individual, the right of practising physic or surgery, within this state.

Diplomas
to students
in certain
schools, not
valid.

§ 19. Every person licensed to practice physic or surgery, or both, shall deposit a copy of such license with the clerk of the county where he resides, who shall file the same in his office; and until such license is so deposited, such person shall be liable to all the penalties provided by law, in the same manner as if he had no license.

Licenses in
all cases to
be filed.

§ 20. No person under the age of twenty-one years shall be entitled to practice physic or surgery in this state.

Persons
under 21.

§ 21. The degree of doctor of medicine conferred by any college in this state, shall not be a license to practice physic or surgery; nor shall any college have, or institute, a medical faculty, to teach the science of medicine, in any other place than where the charter locates the college.

Degrees
conferred
by colleges,
&c.

Sec. 22, repealed by Laws of 1844, ch. 275. See Laws of 1835, ch. 45; 1837, ch. 25; 1830, ch. 126; 1835, ch. 297; 1839, ch. 26; 1846, ch.

TITLE 7.
Qualifica-
tions of
students.

§ 8. No student shall be admitted to an examination by any medical society, until he shall have completed, with some physician and surgeon, duly authorised by law to practise his profession, the term of medical study, prescribed in the following sections of this Title.

Term of
study.

§ 9. The regular term of the study of medical science shall be four years, but a deduction from such term, in no case to exceed one year, shall be made in either of the following cases:

1. If the student, after the age of sixteen, shall have pursued any of the studies usual in the colleges of this state, the period, during which he shall have pursued such studies, shall be deducted:

2. If the student, after the age of sixteen, shall have attended a complete course of all the lectures delivered in an incorporated medical college in this state, or elsewhere, one year shall be deducted.

Certificate.

§ 10. The physician and surgeon with whom a student shall commence his studies, shall file a certificate with the president of the county medical society to which he belongs, certifying that such person has so commenced his studies; and the term of study shall be considered as commencing, from the day on which such certificate is filed.

Order for
term of
study.

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§ 11. If the term of study shall be intended to be for less than four years, upon either of the grounds mentioned in the ninth section of this Title, the president with whom the certificate shall be filed, upon satisfactory proof that a deduction ought to be allowed, shall annex to such certificate, an order specifying the period, not exceeding one year, which, according to the proof exhibited to him, ought to be deducted from the term of four years, and directing that the term of study of the student shall be for the period that shall remain.

Requisites
for diplo-
mas from
regents.

§ 12. No person shall receive from the regents of the university a diploma, conferring the degree of doctor of medicine, unless he shall have pursued the study of medical science for at least three years, after the age of sixteen, with some physician and surgeon, duly authorised by law to practice his profession, and shall also, after the same age, have attended two complete courses of all the lectures delivered in an incorporated medical college, and have attended the last of such courses, in the college by which he shall be recommended for his degree.

See Laws of 1840, ch. 366.

In what
counties
students to
be ex-
amined.

§ 13. No student who has attended one or more courses of medical lectures shall be admitted to an examination by any medical society, except of the county in which he shall have pursued his medical studies for four months immediately preceding his attendance upon his last course of lectures, or by the censors of the state medical society.

Laws of 1836, ch. 532.

If rejected,
to appeal.

§ 14. No person, who shall have been examined by the

censors of any county medical society, as a candidate for the practice of physic and surgery, or either of them, and shall have been rejected on such examination, shall be admitted to an examination, before the censors of any other county medical society; but such person may appeal from the decision of the censors by whom he shall have been examined, to the medical society of the state.

§ 15. No person, who, either upon an original examination or upon an appeal, shall have been rejected by the censors of the state medical society, shall thereafter be admitted to an examination, before the censors of any county medical society.

Persons
rejected by
state
society.

§ 16. No person shall practice physic or surgery, unless he shall have received a license or diploma, for that purpose, from one of the incorporated medical societies in this state, or the degree of doctor of medicine from the regents of the university; or shall have been duly authorised to practice by the laws of some other state or country, and have a diploma from some incorporated college of medicine, or legally incorporated medical society, in such state or country.

Who to
practice
physic.

25 W., 469; 24 W., 22; 15 W., 395; 4 D., 60.

§ 17. No person coming from another country shall practice physic or surgery in this state until he shall have been examined and licensed by the censors of the state medical society; and no person coming from another state shall practice physic or surgery in this state until he shall have filed a copy of his diploma in the office of the clerk of the county where he resides, and until he shall have exhibited to the medical society of that county satisfactory testimonials of his qualifications, or shall have been examined and approved by its censors.

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Persons
from
another
country and
state.

Laws of 1841, ch. 64.

§ 18. No diploma, granted by any authority out of this state, to an individual who shall have pursued his studies in any medical school within this state, not incorporated and organized under its laws, shall confer on such individual, the right of practising physic or surgery, within this state.

Diplomas
to students
in certain
schools, not
valid.

§ 19. Every person licensed to practice physic or surgery, or both, shall deposit a copy of such license with the clerk of the county where he resides, who shall file the same in his office; and until such license is so deposited, such person shall be liable to all the penalties provided by law, in the same manner as if he had no license.

Licenses in
all cases to
be filed.

§ 20. No person under the age of twenty-one years shall be entitled to practice physic or surgery in this state.

Persons
under 21.

§ 21. The degree of doctor of medicine conferred by any college in this state, shall not be a license to practice physic or surgery; nor shall any college have, or institute, a medical faculty, to teach the science of medicine, in any other place than where the charter locates the college.

Degrees
conferred
by colleges,
&c.

Sec. 22, repealed by Laws of 1844, ch. 275. See Laws of 1835, ch. 45; 1837, ch. 25; 1830, ch. 126; 1835, ch. 297; 1839, ch. 26; 1846, ch.

TITLE I.

quorum or otherwise, shall have power to adjourn from time to time, not exceeding ten days at a time.

2 R. L., 260, § 1 & 5. See Laws of 1853, ch. 184.

Calling of meetings.

§ 11. A meeting shall be ordered and called by the officer authorised to appoint the same, as often as three regents, in writing, so request: and the order shall be published in the state paper at least ten days prior to the meeting.

2 R. L., 260, § 1.

Treasurer.

§ 12. The treasurer shall keep an account of all monies by him received and paid out.

2 R. L., 260, § 1 & 2.

Secretary.

§ 13. The secretary shall keep a journal of the proceedings of the regents, in which the ayes and noes on all questions shall be entered, if requested by any one of the regents present.

2 R. L., 260, § 1.

Books and papers.

§ 14. Each regent may always have access to, and be permitted to take copies of, all the books and papers of the corporation.

Power of visitation

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§ 15. The regents are authorised and required, by themselves or their committees, to visit and inspect all the colleges and academies in this state, examine into the condition and system of education and discipline therein, and make an annual report of the state of the same, to the legislature.

2 R. L., 260, § 3.

By-laws.

§ 16. The regents shall have power to make such by-laws and ordinances, as they shall judge most expedient, for the accomplishment of the trust reposed in them.

Grants to regents.

§ 17. Grants made to the regents for certain uses and purposes, shall not be applied, either wholly or in part, to any other uses.

2 R. L., 260, § 4.

May confer degrees.

§ 18. The regents shall have the right of conferring, by diploma under their common seal, on any person whom they may judge worthy thereof, such degrees, above that of master of arts, as are known to, and usually granted by, any college or university in Europe.

Degree of M. D.

§ 19. A degree of doctor of medicine, granted by the regents, shall authorise the person on whom it is conferred, to practise physic and surgery within this state.

2 R. L., 260, § 7. See Laws of 1840, ch. 366.

Vacancies in colleges and academies.

§ 20. In case the trustees of any college shall leave the office of president of the college, or the trustees of any academy shall leave the office of principal of the academy, vacant, for the space of one year, the regents shall fill up such vacancy, unless a reasonable cause shall be assigned for such delay, to their satisfaction.

2 R. L., 260, § 3.

§ 21. The person so appointed, shall continue in office during the pleasure of the regents, and shall have the same powers, and the same salary, emoluments and privileges, as his next immediate predecessor in office enjoyed.

ART. I.
Vacancies
in colleges
and acad-
emies.

§ 22. If such president or principal had no immediate predecessor in office, he shall have such salary as the regents shall direct, to be paid by the trustees out of the funds or property of their college or academy.

Th.

§ 23. The regents shall have the control of the whole income arising from the literature fund, and shall annually divide such income into eight equal parts, and assign one part thereof to each senate district. They shall annually distribute the part so assigned to each district, among such of the incorporated seminaries of learning, exclusive of colleges, within such district, as are now subject, or shall become subject, to their visitation, by a valid, corporate act.

Literature
fund.

Laws of 1827, 237, § 3, 4 & 5.

§ 24. Every such distribution shall be made in proportion to the number of pupils in each seminary, who, for four months during the preceding year, shall have pursued therein, classical studies, or the higher branches of English education, or both.

How
distributed.

§ 25. No pupil in any such seminary, shall be deemed to have pursued classical studies, unless he shall have advanced at least, so far as to have read in Latin, the first book of the *Æneid*; nor to have pursued the higher branches of English education, unless he shall have advanced beyond such knowledge of arithmetic, (including vulgar and decimal fractions,) and of English grammar and geography, as is usually obtained in common schools.

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Studies.

See Laws of 1834, ch. 140, ch. 241; 1837, ch. 241; 1838, ch. 237; 1832, ch. 8.

§ 26. The regents shall require each seminary subject to their visitation, to make an annual return on or before the first day of February in each year, to the secretary of their board.

Annual
report to
regents.

§ 27. Every such return shall be attested by the oath either of the principal instructor in the seminary by which it shall be made, or of one of the trustees thereof, and shall contain:

Contents
thereof.

1. The names and ages of all the pupils instructed in such seminary, during the preceding year, and the time that each was so instructed.

2. A particular statement of the studies pursued by each pupil, at the commencement of his instruction, and of his subsequent studies, until the date of the report, together with the books such student shall have studied in whole or in part, and if in part, what portion.

3. An account or estimate of the cost or value of the library, philosophical and chemical apparatus, and mathematical and other scientific instruments, belonging to the seminary.

4. The names of the instructors employed in the seminary, and the compensation paid to each.

TITLE I.

5. An account of the funds, income, debts and incumbrances of the seminary, and of the application therein, of the monies last received from the regents.

Regents' annual report.

§ 28. The regents shall annually, and on or before the first day of March, in each year, report to the legislature an abstract of all the returns made to them, embracing a general view of the particulars contained therein, and shall also state in their report, the distribution made by them, during the preceding year, of the income of the literature fund, the names of the seminaries sharing in such distribution, and the amount received by each.

See Laws of 1855, ch. 50.

Forms of returns.

§ 29. The regents shall prescribe the forms of all returns, which they shall require from colleges and other seminaries of learning, subject to their visitation, and may direct such forms and such instructions, as from time to time, shall be given by them as visitors, to be printed by the state printer.

Expenses of printing, &c.

§ 30. The expenses of such printing, and all other necessary expenses incurred by the regents, as a board, in the discharge of their official duties, shall be audited by the comptroller, and be paid out of the treasury.

See Laws of 1832, ch. 8; 1834, ch. 140, ch. 241; 1838, ch. 237; 1839, ch. 226; 1840, ch. 366; 1842, ch. 142; 1845, ch. 179; 1851, ch. 536; 1852, ch. 235; 1853, ch. 184, ch. 402; 1855, ch. 50, ch. 410, ch. 471; 1857, ch. 527.

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ARTICLE SECOND.

OF THE POWERS AND DUTIES OF THE TRUSTEES OF COLLEGES.

SEC. 31. Trustees to be a corporation.

32. How meetings held and summoned.

33. How notices to be given.

34. How seniority among trustees determined.

35. Number of trustees; what number a quorum.

36. Powers of trustees enumerated.

37. Privileges conferred by diplomas.

Corporation.

§ 31. The trustees of every college to which a charter shall be granted by the state, shall be a corporation.

2 R. L., 262, § 6.

Meetings.

§ 32. The trustees shall meet upon their own adjournment, and as often as they shall be summoned by their chairman, or in his absence, by the senior trustee, upon the request in writing of any other three trustees.

2 R. L., 262, § 6; 266, § 4, 5, 6, 7 & 8.

Notice thereof.

§ 33. Notice of the time and place of every such meeting shall be given in a newspaper printed in the county where such college is situate, at least six days before the meeting; and every trustee resident in such county, shall be previously notified in writing, of the time and place of such meeting.

Seniority.

§ 34. Seniority among the trustees shall be determined according to the order in which they are named in the charter

of the college; and after all the first trustees shall become extinct, according to the priority of their election.

§ 35. The trustees shall not exceed twenty-four, nor be less than ten, in number; and a majority of the whole number, shall be a quorum for the transaction of business. Quorum.

§ 36. The trustees of every such college, besides the general powers and privileges of a corporation, shall have power; Power of trustees.

1. To elect by ballot their chairman annually:

2. Upon the death, removal out of this state, or other vacancy in the office of any trustee, to elect another in his place by a majority of the votes of the trustees present:

3. To declare vacant the seat of any trustee, who shall absent himself, from five successive meetings of the board:

4. To take and hold, by gift, grant or devise, any real or personal property, the yearly income or revenue of which, shall not exceed the value of twenty-five thousand dollars:

5. To sell, mortgage, let and otherwise use and dispose of such property, in such manner, as they shall deem most conducive to the interest of the college:

6. To direct and prescribe the course of study and discipline, to be observed in the college:

7. To appoint a president of the college, who shall hold his office during good behavior: [461]

8. To appoint such professors, trustees and other officers, as they shall deem necessary, who, unless employed under a special contract, shall hold their offices during the pleasure of the trustees:

9. To remove or suspend from office the president and every professor, tutor or other officer employed under a special contract, upon a complaint in writing by any member of the board of trustees, stating the misbehavior in office, incapacity or immoral conduct, of the person sought to be removed, and upon examination and due proof of the truth of such complaint; and to appoint any other person in place of the president or other officer, thus removed or suspended:

10. To grant such literary honors as are usually granted by any university, college or seminary of learning in the United States; and in testimony thereof to give suitable diplomas, under their seal and the signature of such officers of the college, as they shall deem expedient:

11. To ascertain and fix the salaries of the president, professors and other officers of the college:

12. To make all ordinances and by-laws necessary and proper to carry into effect the preceding powers.

2 R. L., 262, § 6, & 266, § 4, 5, 6, 7 & 8.

§ 37. Every diploma granted by such trustees, shall entitle the possessor to all the immunities which by usage or statute are allowed to possessors of similar diplomas granted by any university, college or seminary of learning in the United States. Effect of diplomas.

TITLE I.

ARTICLE THIRD.

OF THE FOUNDATION OF ACADEMIES.

SEC. 38. Founders of an academy may apply to regents for incorporation.

39. How approbation of regents declared.

40. When funds vest, and how.

Application
for incorpo-
ration.

§ 38. The founders and benefactors of any academy, or as many of them, as shall have contributed more than one half in value, of the property collected for the use thereof, may make to the regents an application in writing under their hands, requesting that such academy may be incorporated, nominating the first trustees, and specifying the name by which the corporation is to be called.

2 R. L., 263, § 10 & 11.

Duty of
regents.

§ 39. In case the regents shall approve thereof, they shall, by an instrument under their common seal, declare their approbation of the incorporation of the trustees of such academy, by the name specified in such application; and the request, and instrument of approbation, shall be recorded in the office of the secretary of state.

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Funds.

§ 40. Immediately after recording the same, the property and funds of such academy, shall be vested in the trustees so nominated, for the use and benefit of the academy.

2 R. L., 263, § 10 & 11.

ARTICLE FOURTH.

OF THE POWERS AND DUTIES OF TRUSTEES OF ACADEMIES.

SEC. 41. Trustees to be a corporation; what number a quorum.

42. Powers of trustees enumerated.

43. How meetings summoned, and by whom.

44. Time and place, how appointed.

45. How notice to be given; who to preside.

46. How seniority determined.

47. In what case the office of a trustee may be vacated.

48. How their number may be reduced.

Corpora-
tion.

§ 41. The trustees of every such academy shall be a corporation, by the name expressed in the instrument of approbation; they shall not be more than twenty-four, nor less than twelve, in number, and a majority of the whole number, shall be a quorum for the transaction of business.

2 R. L., 263, § 10, 11, 12, 13, & 20; by Laws of 1835, ch. 34, seven trustees are a quorum.

General
powers.

§ 42. Such trustees, besides the general powers and privileges of a corporation, shall have authority;

1. To adjourn from time to time, as they may deem expedient:

2. To elect by ballot their president, who shall hold his office for one year, and until another be chosen in his place:

3. Upon the death, resignation, refusal to act, removal out of this state, or other vacancy in the office of any trustee, to elect another in his place, by a majority of the votes of the trustees present:

4. To take and hold by gift, grant or devise, any real or personal property, the clear yearly income or revenue of which shall not exceed the value of four thousand dollars :

5. To sell, mortgage, let or otherwise use and dispose of, such property, for the benefit of the academy :

6. To direct and prescribe the course of discipline and study in the academy :

7. To appoint a treasurer, clerk, principal, masters, tutors, and other necessary officers of the academy ; who unless employed under a special contract, shall hold their offices during the pleasure of the trustees :

8. To ascertain and fix the salaries of all the officers of the academy :

9. To remove or suspend from office any officer employed under a special contract, upon a complaint in writing by a trustee, of the misbehavior in office, incapacity or immoral conduct, of such officer, and upon examination and due proof of the truth of such complaint, and to appoint another person in the place of the officer so removed or suspended :

10. To make all ordinances and by-laws necessary and proper to carry into effect the preceding powers. [468]

2 R. L., 263, § 10, 11, 12, 13 & 20.

§ 43. The trustees shall meet upon their own adjournment and as often as they shall be summoned by their president, or the senior trustee actually exercising his office, and residing within three miles of such academy, upon the request in writing of any other three trustees. Meetings.

§ 44. Every meeting so requested, shall be held at such time and place, as the president or senior trustee shall appoint, not less than five, nor more than twelve, days from the time of the request. Time and place.

§ 45. Previous notice in writing of every such meeting, shall be affixed on the door of the academy, within two days after its appointment; and at every meeting, adjourned or special, the president, or senior trustee present, shall preside. Notice.

§ 46. The seniority of the trustees shall always be determined according to the order of their nomination in the written application to the regents ; and after all the first trustees shall become extinct, according to the priority of their election. Seniority.

§ 47. If a trustee shall refuse or neglect to attend any two successive legal meetings of the trustees, after having been personally notified to attend, and if no satisfactory cause of his non-attendance be shown, the trustees may declare his office vacant. Office of trustee, when vacated.

Laws of 1817, 80, § 1 & 2; see Laws of 1835, ch. 123.

§ 48. Where the number of trustees of any academy shall exceed twelve, the trustees thereof, at their annual meeting, may reduce the number of the original board of trustees to any number, not less than twelve, by abolishing the offices of Number how reduced.

TITLE 1.

those, who may omit to attend such meeting, and shall have omitted to attend two other legal meetings after notice.

See Laws of 1835, ch. 123.

ARTICLE FIFTH.

GENERAL PROVISIONS APPLICABLE TO COLLEGES AND ACADEMIES.

SEC. 49. No religious qualification to be required in professors, tutors, &c.

50. No professor or tutor to be a trustee.

51. No president or principal has a vote relative to his own emoluments.

52. No officer to be a regent.

53. No trustee to be a regent, or regent trustee.

54. Repealed.

55. Returns to be made by institutions so subject.

56. Nothing in this Chapter to affect any charter heretofore granted.

No religious test.

§ 49. No religious qualification or test shall be required from any trustee, president, principal, or other officer of any incorporated college or academy, or as a condition for admission to any privilege in the same.

2 R. L., 265, § 18; 267, § 8.

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Trustee.

§ 50. No professor or tutor of any incorporated college or academy, shall be a trustee of such college or academy.

2 R. L., 265, § 18.

Ib. When not to vote.

§ 51. No president of any such college, or principal of any such academy, who shall be a trustee, shall have a vote in any case relating to his own salary or emoluments.

Regent.

§ 52. No president, principal, or other officer of any such college or academy, shall be a regent of the university.

No trustee to act as regent, and no regent as trustee.

§ 53. No trustee of a college or academy, shall act as a regent of the university, and no regent of the university shall act as trustee of any college or academy; and if any such trustee shall be appointed a regent, or a regent shall be appointed a trustee, he shall elect in which office he will serve, and give notice of such election to the authority by which he shall be appointed, within sixty days from the time of his appointment, otherwise such appointment shall be void.

2 R. L., 265, § 18 & 19. Sec. 54, repealed by Laws of 1834, ch. 140.

Returns to regents.

§ 55. Every college and academy that shall become subject to the visitation of the regents, shall make such returns and reports to the regents, in relation to the state and disposition of its property and funds, the number and ages of its pupils, and its system of instruction and discipline, as the regents shall from time to time require.

Saving clause.

§ 56. Nothing contained in this Chapter shall be construed to alter, or in any manner affect any charter heretofore granted by the legislature, or by the regents of the university, to any college or academy.

2 R. L., 262, § 8. See Laws of 1835, ch. 123; 1856, ch. 54.

ARTICLE SIXTH.

ART. 6.

OF THE FOUNDATION AND GOVERNMENT OF LANCASTERIAN OR SELECT SCHOOLS.

SEC. 57. Founders or benefactors may apply for incorporation.

58. How approbation of regents declared.

59. Request and instrument of approbation to be recorded.

60. Immediately after the recording, funds vest in trustees.

61. Name of corporation to be expressed in instrument of approbation.

62. Powers of trustees enumerated.

63. When the office of trustee vacated.

64 & 65. How such school may be made a district school.

66. Every school incorporated under these provisions, subject to regents.

§ 57. The founders and benefactors of any school established, or to be established for the instruction of youth, on the system of Lancaster or Bell, or any other system of instruction approved by the board of regents, or as many of such founders as shall have contributed more than one half of the property collected or appropriated for the use of such school, may make to the regents of the university, an application in writing, under their hands, requesting that such school may be incorporated, nominating the first trustees, and specifying the name by which the corporation is to be called.

Application
to regents
for incorpo-
ration.

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Laws of 1821, 54, § 1.

§ 58. In case the regents shall conceive a compliance with such request, will be conducive to the diffusion of useful knowledge, they shall, by an instrument under their common seal, declare their approbation of the incorporation of the trustees of the school, by the name specified in such application.

Duty of
regents.

§ 59. The request in writing, and instrument of approbation, shall be recorded in the office of the clerk of the county, in which such school shall be established.

Papers
where
recorded.

§ 60. Immediately after recording the same, the property and funds of such school shall be vested in the trustees so nominated, for the use and benefit of the school.

Funds.

Laws of 1821, 54, § 2.

§ 61. The trustees of such school, shall be a corporation, by the name expressed in the instrument of approbation.

Corpora-
tion.

Laws of 1821, 54, § 2.

§ 62. The trustees of every such school, (besides the general powers and privileges of a corporation,) shall have authority,

Powers of
trustees.

1. To elect, by ballot, their president, treasurer and clerk, annually:

2. Upon the death, resignation, refusal to act, removal out of the state, or other vacancy in the office of any trustee, to elect another in his place:

3. To appoint a master, assistants and other necessary officers of the school:

4. To remove or suspend any of them at pleasure, and to fix their respective salaries or compensation:

TITLE I.

5. To appoint the times and places of their own regular meetings, and to adjourn from time to time:

6. To take and hold any real or personal property, the clear yearly income or revenue of which, shall not exceed the value of four thousand dollars:

7. To sell, mortgage, let and otherwise use and dispose of, such property for the benefit of the school:

8. To make all ordinances and by-laws, necessary and proper, to carry into effect the preceding powers.

Laws of 1821, 54, § 2, 3 & 4.

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When office
vacated.

§ 63. If any trustee shall refuse or neglect to attend the stated meetings of the trustees, for four meetings successively, the office of such trustee may be declared vacant by the trustees.

Laws of 1821, 54, § 4 & 5.

How made
a district
school.

§ 64. The trustees of any one or more common-school districts, in any city, town or village of this state, within which any incorporated Lancasterian, or other select school is, or shall be established, with the consent of a majority of the taxable inhabitants of such district or districts, expressed at a meeting called for that purpose, may agree with the trustees of such incorporated school, to make the same a district school.

Laws of 1821, 54, § 6.

1b.

§ 65. Such incorporated school shall, during the continuance of such agreement, become a district school, and be entitled to all the benefits and privileges, and subject to all the regulations of other district schools.

Visitation
of regents.

§ 66. Every school incorporated under the provisions of this Article, shall be subject to the control and visitation of the regents; and shall make such returns and reports, in relation to the state and disposition of its property and funds, the number and ages of its pupils, and its system of instruction and discipline, as the regents shall from time to time require.

TITLE II.**OF COMMON SCHOOLS.**

ART. 1. — Of the powers and duties of the superintendent of common schools, and of the apportionment of school monies.

ART. 2. — Of the distribution of the common school fund.

ART. 3. — Of the powers and duties of the town superintendent.

ART. 4. — Of the inspection and supervision of town superintendents.

ART. 5. — Of the formation and alteration of school districts.

ART. 6. — (Repealed.)

ART. 7. — Local regulations respecting common schools.

ARTICLE FIRST

OF THE POWERS AND DUTIES OF THE SUPERINTENDENT OF COMMON SCHOOLS, AND OF THE APPORTIONMENT OF SCHOOL MONIES.

- SEC. 1. Superintendent must make annual report to the legislature.
 2. When school monies to be apportioned.
 3. How apportionment to be made.
 4. (Repealed.)
 5. How an increase apportioned.
 6. How apportionment made when census defective.
 7. New apportionment to be made.
 8. Apportionment to be certified, and notice to be given.
 9. Superintendent to prepare forms and instructions.
 10. Six first Articles of this Title to be printed and distributed.
 11. Reasonable expenses to be paid out of treasury.

§ 1. There shall continue to be a superintendent of common schools, whose duty amongst other things, it shall be, to prepare and submit an annual report to the legislature, containing, [467]
General duties of superintendent.

1. A statement of the condition of the common schools of the state:

2. Estimates and accounts of expenditures of the school monies:

3. Plans for the improvement and management of the common school fund, and for the better organization of the common schools: and,

4. All such matters relating to his office, and to the common schools, as he shall deem expedient to communicate.

21 B., 210; see Laws of 1841, ch. 260; 1839, ch. 330; 1843, ch. 133.

§ 2. In every year, immediately following a year in which a census of the population of this state shall have been taken, under the authority of the state, or of the United States, the superintendent shall apportion the school monies to be annually distributed, amongst the several counties of the state, and the share of each county, amongst its respective towns and cities. Apportionment.

Laws of 1819, 188, § 5; 1822, 287; 1827, 237; 1830, ch. 320, § 5, 6, repealing § 4.

§ 3. Such apportionment shall be made among the several towns and cities of the state, according to the ratio of their population respectively, as compared with the population of the whole state, according to the last preceding census. Ratio of apportionment.

§ 5. If an increase of the school monies to be distributed, shall take place in any other year, than one immediately following a census, the superintendent shall apportion such increase amongst the several counties, cities and towns, according to the ratio of the apportionment then in force. Increase.

§ 6. When the census, or returns, upon which an apportionment is to be made, shall be so far defective, in respect to any county, city, or town, as to render it impracticable for the superintendent to ascertain the share of school monies, which ought then to be apportioned to such county, city, or town, Proceeding when census defective.

TITLE 1.

he shall ascertain, by the best evidence in his power, the facts, upon which the ratio of such apportionment shall depend, and shall make the apportionment accordingly.

When town altered.

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§ 7. Whenever, in consequence of the division of a town, or the erection of a new town, in any county, the apportionment then in force shall become unjust, as between two or more of the towns of such county, the superintendent shall make a new apportionment of the school monies, next to be distributed amongst such towns, ascertaining by the best evidence in his power, the facts upon which the ratio of apportionment, as to such towns, shall depend.

Laws of 1819, 188; § 5; 1827, 237.

Certificate and notice.

§ 8. The superintendent shall certify each apportionment made by him, to the comptroller, and shall give immediate notice thereof, to the clerk of each county interested therein, and to the clerk of the city and county of New-York; stating the amount of monies apportioned to his county, and to each town and city therein, and the time when the same will be payable to the treasurer of such county, or to the chamberlain of the city of New-York.

Regulations, &c.

§ 9. The superintendent shall prepare suitable forms and regulations for making all reports, and conducting all necessary proceedings, under this Title, and shall cause the same, with such instructions as he shall deem necessary and proper, for the better organization and government of common schools, to be transmitted to the officers required to execute the provisions of this Title throughout the state.

Laws of 1819, 208, § 38.

Certain articles to be printed.

§ 10. He shall cause so many copies of the first six Articles of this Title, with the forms, regulations and instructions prepared by him, thereto annexed, to be, from time to time, printed and distributed, amongst the several school districts of the state, as he shall deem the public good to require.

Expenses how paid.

§ 11. All monies reasonably expended by him, in the execution of his duties, shall, upon due proof, be allowed to him by the comptroller, and be paid out of the treasury.

See Laws of 1839, ch. 330; 1841, ch. 260; 1843, ch. 133.

ARTICLE SECOND.

OF THE DISTRIBUTION OF THE COMMON SCHOOL FUND.

Sec. 12. When school monies to be paid.

13. To be applied for as soon as payable.

14. County treasurer to give notice.

15. Duty of treasurer if monies are not applied for.

16, 17 & 18. Repealed.

19. If no commissioners, to be paid to treasurer.

When paid.

§ 12. The sum annually to be distributed for the encouragement of common schools, shall be paid on the first day of February, in every year, on the warrant of the comptroller,

to the treasurers of the several counties, and the chamberlain of the city of New-York.

Laws of 1819, 187, § 3; 1824, 337, § 1.

§ 13. The treasurer of each county, and the chamberlain of the city of New-York, shall apply for and receive the school monies apportioned to their respective counties, as soon as the same become payable.

Treasurer to apply.

Laws of 1819, 188, § 4.

§ 14. Each treasurer receiving such monies, shall give notice, in writing, to some one or more of the commissioners of common schools, of each town or city in his county, of the amount apportioned to such town or city, and shall hold the same, subject to the order of such commissioners.

(469)
To give notice.

Laws of 1819, 188, § 4.

§ 15. In case the commissioners of any such city or town, shall not apply for and receive such monies, or in case there are no commissioners appointed in the same, before the next receipt of monies apportioned to the county, the monies so remaining with the treasurer, shall be retained by him, and be added to the monies next received by him for distribution, from the superintendent of common schools, and be distributed therewith, and in the same proportion.

Monies remaining how disposed of.

Sections 16, 17 and 18 repealed by Laws of 1851, ch. 151.

§ 19. If there shall not be any commissioners of common schools, in such town when the monies are collected, the collector shall pay the same, retaining his fees for collection, to the county treasurer, to be by him apportioned among the several cities and towns in the county, and distributed in the manner provided in the fifteenth section of this Title.

When monies to be paid to treasurer.

Laws of 1819, 188, § 6. See Laws of 1839, ch. 330; 1851, ch. 151, 425 and 449.

[That part of the Revised Statutes which related to common schools was passed in 1827 and took effect January 1, 1828. During the 35 years that have since elapsed many acts have been passed on the subject; but those only are inserted here which are strictly parts of the Revised Statutes. The other general acts now in force, on that subject, will be found in a subsequent volume.]

CHAP. 480.

AN ACT relative to the office of town superintendent of common schools, and amendatory of the Revised Statutes, entitled, "Of public instruction."

PASSED December 15, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. There shall continue to be elected in each of the towns in this state, at the same time, and in the manner now provided by law for the election of other town officers, an

Town superintendents to be elected.

TITLE 1

officer to be denominated "town superintendent of common schools," who shall possess all the powers, perform all the duties, and be subject to all the restrictions, liabilities and penalties conferred and imposed by this act.

Those now
in office
how long
to hold.

§ 2. The several town superintendents in office when this act takes effect, elected or appointed in conformity to existing laws, shall continue to hold their respective offices, and discharge the duties thereof until the first Monday of November, one thousand eight hundred and forty-eight.

Superin-
tendents
hereafter
elected to
give bond.

§ 3. The town superintendents of common schools hereafter to be elected in conformity with the provisions of this act, shall, each of them, on or before the first Monday of November succeeding such election, execute to the supervisor of his town and file with the town clerk, a bond with one or more sufficient sureties to be approved by the said supervisor by endorsement over his signature on said bond, with a penalty in double the amount of all the school moneys received by his town from all sources during the preceding year and conditioned for the faithful application and legal disbursement of all the school money coming into his hands during his term of office, and for the faithful discharge of all the duties of said office; and in case such bond shall not be executed, filed and approved within the time herein prescribed, the office of such town superintendent shall be deemed vacant; and any such or any other vacancy that may occur in said office, shall be filled by any three justices of the peace of the same town by a warrant under their hands and seals, who are hereby authorized to make such appointments; and the persons so appointed shall hold their respective offices until others are elected or appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly chosen by the electors.

Vacancies
to be filled
by three
justices.

The war-
rant to be
filed.

§ 4. The justices making the said appointment shall forthwith cause the said warrant to be filed in the office of the town clerk of the town, and give immediate notice to the person appointed.

Tenure of
office.

§ 5. Every town superintendent elected after this act takes effect shall on executing the bond as before provided, enter upon the duties of his said office on the first Monday of November succeeding his election, and shall hold his office for two years thereafter, and until a successor who shall have been duly elected, shall have taken the oath of office and filed an official bond pursuant to the provisions of this act.

Restriction.

§ 6. No town superintendent of a town shall hold the office of trustee of a school district, nor shall a person chosen a trustee, hold the office of district clerk, and no town superintendent shall hold the office of either supervisor or town clerk.

R. S.
amended.

§ 7. The third, fourth, fifth and sixth articles of title two, chapter fifteen, part first of the Revised Statutes, entitled

“Of public instruction,” shall be and the same are hereby amended so as to read as follows :

ART. 2.

ARTICLE THIRD.

THE POWERS AND DUTIES OF THE TOWN SUPERINTENDENT OF COMMON SCHOOLS.

- SEC. 8. Duty of town superintendent.
9. To except certain districts.
 10. Teachers' and library money.
 11. When money not to be apportioned.
 12. Who are qualified teachers.
 13. Restrictions on separate neighborhoods.
 14. State superintendent, when to direct apportionment.
 15. (Repealed.)
 16. When new districts excluded.
 17. Moneys remaining on hand a year.
 18. Moneys on hand two years.
 19. Yearly report to county clerk.
 20. Penalty for neglecting it.
 21. Duty of county clerk on neglect.
 22. Share of money may be withheld.
 23. Superintendent liable therefor.
 24. Supervisor to prosecute.
 25. Town superintendent to keep accounts.
 26. Account to be rendered to successor.
 27. Balance to be paid over.
 28. When balance appropriated.
 29. Successor may sue for balance.
 30. Town superintendent a corporation.
 31. Pay of town superintendent.
 32. Duty of town clerk.

§ 8. It shall be the duty of the town superintendent of common schools in each town, School districts.

1. To divide the town into a convenient number of school districts, and to regulate and alter such districts as herein-after provided :

2. To set off by itself any neighborhood in the town adjoining to any other state of this Union, where it has been usual or shall be found convenient for such neighborhood to send their children to a school in such adjoining state : To set off certain neighborhoods.

3. To describe and number the school districts, and to deliver the description and numbers thereof, in writing, to the town clerk, immediately after the formation or alteration thereof : Districts to be numbered.

4. To deliver to such town clerk a description of each neighborhood, adjoining to any other state, set off by itself ; Neighborhoods.

5. To apply for and receive from the county treasurer all moneys apportioned for the use of common schools in their town, and from the collector of the town, all moneys raised therein for the same purpose, as soon as such moneys shall become payable, or be collected : To receive school moneys.

TITLE 2.
To apportion the same.

6. To apportion the school moneys received on the first Tuesday of April in each year, among the several school districts, parts of districts and neighborhoods separately set off, within the town, in proportion to the number of children residing in each, over the age of five and under that of sixteen years, as the same shall have appeared from the last annual reports of their respective trustees:

When to apportion the same.

7. If the town superintendent shall have received the school moneys of the town, and all the reports from the several school districts therein, before the first Tuesday of April, he shall apportion such moneys as above directed, within ten days after receiving all of the said reports and the said moneys:

To sue for penalties and forfeitures.

8. To sue for and collect, by his name of office, all penalties and forfeitures imposed in this title, and in respect to which no other provision is made which shall be incurred by any officer or inhabitant of their town, and after deducting his costs and expenses, to add the sums recovered to the school moneys received by him, to be apportioned and paid in the same manner.

14 B., 59.

To except districts which do not report

§ 9. In making the apportionment of moneys among the several school districts, no share shall be allotted to any district, part of a district, or separate neighborhood, from which no sufficient annual report shall have been received, for the year ending on the last day of December, immediately preceding the apportionment.

Teachers and library money to be designated.

§ 10. In making the apportionment of public money, it shall be the duty of the town superintendent to designate the respective proportions of teachers' and library money belonging to each district, and to pay over as much as is designated teachers' money, on the written order of a majority of the trustees of each district, to the teachers entitled to receive the same.

Money not to be apportioned unless school has been kept in district four months.

§ 11. No moneys shall be apportioned and paid to any district or part of a district, unless it shall appear by such report that a school had been kept therein for at least four months during the year ending at the date of such report, by a qualified teacher; that no other than a duly qualified teacher had at any time during the year for more than one month been employed to teach the school in said district; and that all moneys received during that year have been applied to the payment of the compensation of such teacher; and no portion of the library money shall be apportioned or paid to any district or part of a district, unless it shall appear from the last annual report of the trustees that the library money received at the last preceding apportionment was duly expended according to law, on or before the first day of October subsequent to such apportionment.

Qualified teachers.

§ 12. No teacher shall be deemed a qualified teacher, within the meaning of this title, who shall not have received, and

shall not then hold a certificate of qualification, dated within one year, from the town superintendent of common schools for the town in which such teacher shall be employed.

21 B., 252.

§ 13. No part of such moneys shall be apportioned or paid to any separate neighborhood adjoining another state, unless it shall appear from the report of its trustees that all moneys received by them during the year ending at the date of such report have been faithfully applied, in paying for the instruction of children residing in such neighborhood.

Restrictions as to separate neighborhoods.

§ 14. Whenever an apportionment of the public money shall not be made to any school district, in consequence of any accidental omission to make any report required by law, or to comply with any other provision of law, or any regulation, the state superintendent may direct an apportionment to be made to such district, according to the equitable circumstances of the case, to be paid out of the public money on hand; or if the same shall have been distributed, out of the public money to be received in a succeeding year.

State superintendent may direct apportionment to be made.

Sec. 15 repealed by Laws of 1849, ch. 382.

§ 16. The provisions of the foregoing section shall extend to all cases where a school district shall have been formed at such time previous to the first day of January, as not to have allowed a reasonable time to have kept a school therein for the term of four months, such district having formed out of a district or districts in which a school shall have been kept for four months by a teacher duly qualified, during the year preceding the first day of January.

The foregoing provision extended to certain districts.

§ 17. All moneys apportioned by the town superintendent, to the trustees of a district, part of a district, or separate neighborhood, which shall have remained in the hands of the town superintendent for one year after such apportionment, by reason of the trustees neglecting or refusing to receive the same, shall be added to the moneys next thereafter to be apportioned by the town superintendent, and shall be apportioned and paid therewith in the same manner.

Moneys remaining in the hands of town superintendents how to be disposed of.

§ 18. In case any school moneys received by the town superintendent cannot be apportioned by him, for the term of two years, after the same are received, by reason of the non-compliance of all the school districts in his town with the provisions of this title, such moneys shall be returned by him to the county treasurer, to be by him apportioned and distributed, together and in the same manner with the moneys next thereafter to be received by him for the use of common schools.

Moneys remaining in his hands for two years to be returned.

§ 19. It shall be the duty of the town superintendent in each town, between the first day of July and the first day of August in each year, to make and transmit to the county clerk a report, in writing, bearing date on the first day of July, in the year of its transmission, and stating,

Report to be made yearly to county clerk.

TITLE 2.
Number of
districts.

Districts,
parts and
neighbor-
hoods.

Time a
school has
been kept.

Moneys
received.

Children
taught.

Whole
amount of
moneys
received.

How
expended.

Amount
paid for
teacher's
wages,
taxes
levied, &c.

Penalty for
neglect.

Duty of
county
clerk.

Penalty for
neglecting
to report.

1. The whole number of school districts and neighborhoods separately set off within the town :

2. The districts, parts of districts and neighborhoods from which reports shall have been made to him, or his immediate predecessor in office, within the time limited for that purpose :

3. The length of time a school shall have been kept in each of such districts or parts of districts, distinguishing what portion of that time the school shall have been kept by qualified teachers :

4. The amount of public moneys received in each of such districts, parts of districts and neighborhoods :

5. The number of children taught in each, and the number of children over the age of five and under sixteen years, residing in each :

6. The whole amount of moneys received by him, or his predecessor in office, during the year ending at the date of such report, and since the date of the last preceding report ; distinguishing the amount received from the county treasurer, from the town collector, and from any other and what source :

7. The manner in which such moneys have been expended, and whether any, and what part remains unexpended, and for what cause :

8. The amount of money paid for teachers' wages, in addition to the public money paid therefor, the amount of taxes levied for purchasing school-house sites, for building, hiring, purchasing, repairing and insuring school-houses, for fuel and supplying deficiencies in rate bills, for district libraries, or for any other purposes allowed by law, in the districts, parts of districts and neighborhoods from which reports shall have been received by him or his immediate predecessor in office, with such other information as the state superintendent may from time to time require, in relation to the districts and schools within his town.

§ 20. Town superintendents who neglect to furnish the information required by the last preceding section, shall severally forfeit to the town for the use of the common schools therein, the sum of ten dollars, to be sued for by the supervisor of the town.

§ 21. In case the town superintendent in any town shall not, on or before the first day of August, in any year, make such report to the clerk of the county, it shall be his duty to give immediate notice of such neglect to the clerk of such town.

§ 22. The town superintendent neglecting to make such report within the limited period, shall forfeit to the town, for the use of the common schools therein, the sum of ten dollars ; and the share of school moneys apportioned to such town for the ensuing year, may, in the discretion of the state superintendent be withheld, and be distributed among the other towns in the same county, from which the necessary reports shall have been received.

§ 23. When the share of school moneys apportioned to a town, shall thus be lost to the town, by the neglect of its town superintendent, the town superintendent guilty of such neglect, and his sureties shall be liable for the full amount so lost with interest.

ART. 2.
Superintendent and sureties to be liable.

§ 24. It shall be the duty of the supervisor of the town, upon notice of such loss, from the state superintendent or county treasurer, to prosecute without delay, in the name of the town, for such forfeiture; and the moneys recovered shall be distributed and paid by such supervisor to the several districts, parts of districts, or separate neighborhoods of the town, in the same manner as it would have been the duty of the town superintendent to have distributed and paid them, if received from the county treasurer.

Supervisors when to prosecute.

§ 25. The town superintendent in each town, shall keep a just and true account of all school moneys received and expended by him during each year for which he shall have been chosen, and shall lay the same before the board of auditors of town accounts at the annual meeting of such board, in each year.

A just and true account to be kept.

§ 26. The town superintendent of common schools in each town shall, within fifteen days after the termination of his office, render to his successor in office, a just and true account, in writing, of all school moneys by him received, before the time of rendering such account, and of the manner in which the same shall have been appropriated and expended by him; and the account so rendered shall be delivered by such successor in office to the town clerk, to be filed and recorded in his office.

Accounts to be rendered to successors in office.

§ 27. On rendering such account, if any balance shall be found remaining in the hands of the town superintendent, the same shall immediately be paid by him to his successor in office.

Balance of money to be paid over.

§ 28. If such balance, or any part thereof, shall have been appropriated by the town superintendent to any particular school district, part of a district or separate neighborhood, and shall remain in his hands for the use thereof, a statement of such appropriation shall be made in the account so to be rendered, and the balance paid to such successor in office, shall be paid over by him, according to such appropriation.

Provision in case part of balance has been applied.

§ 29. Such successor in office may bring a suit in his name of office for the recovery, with interest, of any unpaid balance of school moneys, that shall appear to have been in the hands of any previous town superintendent on leaving his office, either by the accounts rendered by such town superintendent, or by other sufficient proof, and in case of the death of such town superintendent, such suit may be brought against his representatives.

Successors in office may sue for balances unpaid.

§ 30. The town superintendent in each town, shall have the powers and privileges of a corporation, so far as to enable him to take and hold any property transferred to him for the use of common schools in such town.

Power to hold property for use of schools.

TITLE 2
Pay of
town super-
intendent.

§ 31. The town superintendent shall be entitled to receive one dollar and twenty-five cents per day for every day actually and necessarily devoted by him in his official capacity, to the service of the town for which he may be chosen, the same to be paid in like manner as other town officers are paid.

Of the duty of town clerks.

Town
clerks to
receive and
keep re-
ports, &c.

§ 32. It shall be the duty of the town clerk of each town,

1. To receive and keep all reports made to the town superintendent from the trustees of school districts, and all the books and papers belonging to the town superintendent, when required, and to file them in his office :

To receive
estimates.

2. To receive all his estimates and apportionments of school money, and to record the same in a book to be kept for that purpose :

To give
notice
about
report.

3. To notify the town superintendent, upon receiving notice from the county clerk that he has not made his annual report, for the purpose of making such report.

ARTICLE FOURTH.

OF INSPECTION AND SUPERVISION BY TOWN SUPERINTENDENTS.

Sec. 33. School inspector.

34 & 35. To examine teachers.

36. To give certificate of qualification.

37. Certificate may be annulled.

38. Re-examination may be required.

39. Note of annulling to be filed.

40. District in two towns.

41. Schools how often to be visited.

42. How then examined.

School
inspector.

§ 33. The town superintendent in each town shall be the inspector of common schools therein.

To examine
candidates.

§ 34. It shall be his duty to examine all persons offering themselves as candidates for teaching common schools in such town.

As to
learning
and moral
character.

§ 35. In making such examination, it shall be the duty of the town superintendent to ascertain the qualifications of the candidate, in respect to moral character, learning and ability.

Certificate
when to be
given.

§ 36. If he shall be satisfied in respect to the qualifications of the candidate, he shall deliver to the person so examined, a certificate signed by him, in such form as shall be prescribed by the state superintendent.

Certificates
may be
annulled.

§ 37. The town superintendent may annul any such certificate given by him or his predecessors in office, when he shall think proper, giving at least ten days' previous notice in writing to the teacher holding it, and to the trustees of the district in which he may be employed, of his intention to annul the same.

10 B., 290 ; 17 B., 299.

Re-exami-
nation may
be required.

§ 38. The town superintendent, whenever he shall deem it necessary, may require a re-examination of all or any of the

teachers in his town, for the purpose of ascertaining their qualifications to continue as such teachers.

ART. 5.

§ 39. The annulling of a certificate shall not disqualify the teacher to whom it was given, until a note in writing thereof, containing the name of the teacher, and the time when his certificate was annulled, shall be made by the town superintendent, and filed in the office of the town clerk.

Note to be filed with county clerk.

§ 40. When any school district shall be composed of parts of two or more towns, the town superintendent of the town in which the school house of such district may be situated, shall examine into and certify the qualifications of any teacher offering to teach in such district, in the same manner as is provided by the preceding sections of this article, and may also in the same manner annul the certificate of such teacher; and no school-house shall be erected so as to stand on the division lines of any two or more towns.

Provision as to districts composed of parts of two or more towns.

§ 41. It shall be the duty of the town superintendent to visit all such common schools, within his town, as shall be organized according to law, at least twice a year, and oftener if he shall deem it necessary.

Schools how often to be visited.

§ 42. At such visitation, the town superintendent shall examine into the state and condition of such schools, both as respects the progress of the scholars in learning, and the good order of the schools; and may give his advice and direction to the trustees and teachers of such schools as to the government thereof, and the course of studies to be pursued therein.

How to be examined, &c.

ARTICLE FIFTH.

OF THE FORMATION AND ALTERATION OF SCHOOL DISTRICTS.

- SEC. 43. Districts, how to be made or altered.
 44. Joint districts.
 45. Alteration in districts, when to take effect.
 46. Special district meetings.
 47, 48 & 49. Repealed.
 50. When districts are consolidated.
 51. Repealed.
 52. Money of annulled districts.
 53. Debts of dissolved districts.
 54, 55. Forming new districts.
 56. Renewing the notice thereof.
 57. Omission of giving notice.
 58. Inhabitants to meet.
 59. Who qualified to vote.
 60. Voter may be challenged.
 61. Penalty for false voting.
 62. Power of the district meeting.
 63. Trustees to be divided into classes.
 64. Notice of district meetings.
 65. Annual district meeting.
 66. Neglect to hold annual meeting.
 67. Vacancy in office of district clerk.
 68. Loss of the district records.

TITLE 1.

- Sec. 69. Special meetings in districts.
 70. Tax for building school house.
 71. Tax, how to be collected.
 72. When district is in two towns.
 73. Site of school house, how changed.
 74. Former site may be sold.
 75. Avails how applied.
 76. Tenure of office.
 77 & 78. Vacancies, how supplied.
 79. Penalty for refusing to serve.
 80. Officers may resign.
 81. Duty of district clerk.
 82. Duty of trustees.
 83. Repealed.
 84. Deficiency how raised.
 85. Apportionment of tax.
 86, 87, 88, 89, 90. Liability to taxation.
 91. Notice of unpaid taxes.
 92. To be paid by county treasurer.
 93. Supervisors may collect the same.
 94. Owner may pay county treasurer.
 95. Mode of collecting the same.
 96. Valuation of taxable property.
 97. Reduction of valuation.
 98. Exemption from school tax.
 99. Tax list, when to be made out.
 100. When to be delivered to collector.
 101. Collector's neglect to collect.
 102. Forfeiture, how recovered.
 103. Taxes in joint districts.
 104. Account books to be procured.
 105. Fuel how provided.
 106, 107 & 108. Repealed.
 109. Expenses to be raised by tax.
 110. Warrant, how issued.
 111. Effect of tax warrant.
 112. Warrants may be renewed.
 113. Errors in rate bills, how corrected.
 114. Town superintendent may be sued.
 115. Trustees to make annual report.
 116^a. Contents of report.
 117^a. Poor house children excluded.
 118^a. All other children included.
 119^a. Indian children excluded.
 120^a. Children who may attend school.
 121^a. District in two towns.
 122^a. Separate neighbourhood.
 123^a. Penalty for false report.
 124^a. Property vested in trustees.
 125^a. Trustees to render annual account.
 126^a. Balance to be paid over.
 127^a. Penalty for neglect.
 128^a & 129^a. Successors may sue for it.
 130^a. Penalty for not accounting.
 131^a. Remedy for unpaid balances.
 132^a. Right of appeal.
 133^a to 143^a. District libraries.
 144^a. Duty of county clerk.

SEC. 145*. Penalties on district officers.

146*. Costs of suits against officers.

147*. Schools for colored children.

148*. Duty of state superintendent.

149*. Act to be printed.

150*. Repealing clause.

§ 43. In the erection or alteration of a school district, the trustees of any district to be affected thereby, may apply to the supervisor and town clerk to be associated with the town superintendent; and their action shall be final unless duly appealed from; the compensation of the supervisor and town clerk when thus associated, shall be the same as that of the town superintendent.

Districts
how to be
erected or
altered.

§ 44. Whenever it may become necessary or convenient to form a district out of two or more adjoining towns, the town superintendent of each of such adjoining towns, or the major part of them, may form, regulate and alter such district.

Joint
districts.

3 D., 114.

§ 45. No alteration of any school district, made without the consent of the trustees thereof, shall take effect until three months after notice, in writing, shall be given by the town superintendent, to some one or more of such trustees; nor shall any alteration or regulation of an organized school district be made to take effect between the first day of December in any one year, and the first day of May following.

Alterations
of districts
when to
take effect.

§ 46. If the town superintendent in any town, shall require by notice in writing, the attendance of the town superintendents of any other town or towns, at a joint meeting for the purpose of altering a school district formed from their respective towns, and a major part of the town superintendents notified shall refuse or neglect to attend, the town superintendents attending by a majority of votes, may call a special district meeting of such district, for the purpose of deciding on such proposed alteration; and the decision of such meeting shall be as valid as if made by the town superintendents of all the towns interested, but shall extend no further than to dissolve the district formed from such towns.

Special
district
meetings in
certain
cases may
be called.

§ 50. When two or more districts shall be consolidated into one, the new district shall succeed to all the rights of property possessed by the districts of which it shall be composed; and when a district is annulled, and portions thereof are annexed to other districts, the property of the district so annulled shall be sold by the town superintendent of the town in which the school house is located, at public auction, to the highest bidder therefor, after at least five days' public notice, by notices posted in three or more public places in said town one (of) which shall be within the district so annulled, and the proceeds of such sale shall be first applied so far as requisite to the payment of any just debts due from the district so annulled, and the residue thereof shall be apportioned among the taxable inhabitants of the district so annulled in the ratio of

Provision
in cases
where two
or more
districts
are consoli-
dated into
one.

TITLE 1.

Site.

To lay a
tax.To alter
proceed-
ings.Book of
minutes.To design-
ate sites
for school
houses, &c.

lector, and a librarian at their first meeting, and as often as such offices or either of them become vacated:

4. To designate a site for a district school house:

5. To lay such tax on the taxable inhabitants of the district, as the meeting shall deem sufficient to purchase or lease a suitable site for a school house, and to build, hire or purchase such school house, and to keep in repair and furnish the same with the necessary fuel and appendages:

6. To alter, repeal and modify their proceedings from time to time as occasion may require:

7. To vote a tax for the purchase of a book for the purpose of recording the proceedings in their respective districts:

8. With the consent of the town superintendent of the town, to designate sites for two or more school houses, for such district, and lay a tax on the taxable property in such district, to purchase or lease such sites, and to hire, build or purchase such school houses, and to keep in repair, and furnish the same with necessary fuel and appendages, and may also in their discretion lay a tax, not exceeding twenty dollars in any one year, to purchase maps, globes, black-boards, and other school apparatus.

24 W., 266; 7 W., 341; 3 D., 114; 4 H., 111; 4 B., 25; 18 J. R., 351; 5 H., 46; 16 J. R., 135; 1 D., 214.

Trustees to
be divided
into three
classes.

§ 63. The trustees chosen at the first legal meeting of any school district, shall be divided by lot into three classes, to be numbered, one, two and three; the term of office of the first class shall be one year, of the second, two, of the third, three; and one trustee only shall thereafter annually be elected, who shall hold his office for three years, and until a successor shall be duly elected or appointed. In case of a vacancy in the office of either of the trustees, during the period for which he or they shall have been respectively elected, the person or persons chosen or appointed to fill such vacancy shall hold the office only for the unexpired term.

Notice of
meeting.

§ 64. Every notice of a district meeting called in pursuance of this act shall state the purpose for which such meeting is called.

3 D., 114.

Annual
meeting.

§ 65. In each school district an annual meeting shall be held at the time and place previously appointed; and at the first district meeting, and at each annual meeting, the time and place of holding the next annual meeting shall be fixed.

Provision
in case of
neglect to
hold annual
meeting.

§ 66. Whenever the time for holding annual meetings in a district for the election of district officers shall pass without such election being held, a special meeting shall be notified by the clerk of such district to choose such officers; and if no such notice be given by him or the trustees last elected or appointed, within twenty days after such time shall have passed, the town superintendent or town clerk may order any inhabitant of such district qualified to vote at district meet-

ings, to notify such meeting in the manner provided by law in case of the formation of a new district; and the officers chosen at any such special meeting, shall hold their office until the time for holding the next annual meeting.

§ 67. When the clerk and all the trustees of a school district shall have removed or otherwise vacated their office, and where the records of a district shall have been destroyed or lost, or where trustees neglect or refuse to call meetings to choose trustees, the superintendent shall have authority to order such meetings, and the same shall be notified in the manner provided by law in the case of the formation of new districts.

In case of vacancy in office of district clerk.

§ 68. When in consequence of the loss of the records of a school district, or the omission to designate the day for its annual meeting, there shall be none fixed, or it cannot be ascertained, the trustees of such district may appoint a day for holding the annual meeting of such district.

In case of loss of the records.

§ 69. A special meeting shall be held in each district whenever called by the trustees; and the proceedings of no district meeting, annual, or special, shall be held illegal for want of a due notice to all the persons qualified to vote thereat, unless it shall appear that the omission to give such notice was wilful and fraudulent.

Special meetings.

6 H., 647; 3 D., 114; 1 D., 214.

§ 70. No tax to be voted by a district meeting for building, hiring or purchasing a school house, shall exceed the sum of four hundred dollars, unless the town superintendent of the town in which the school house is to be situated, shall certify in writing his opinion that a larger sum ought to be raised, and shall specify the sum; in which case, a sum not exceeding the sum so specified, shall be raised; and in districts composed of parts of several towns, the certificate of a major part of the superintendents of said towns shall be necessary for such purpose.

Amount to be voted for building or hiring school house.

2 D., 232.

§ 71. Whenever a majority of all the taxable inhabitants of any school district, to be ascertained by taking and recording the ayes and noes of such inhabitants attending at any annual, special or adjourned school district meeting legally called or held, shall determine that the sum proposed and provided for in the next preceding section, shall be raised by instalments; it shall be the duty of the trustees of such district, and they are hereby authorized to cause the same to be levied, raised and collected, in equal annual instalments, in the same manner, and with the like authority that other school district taxes are raised, levied and collected, and to make out their tax list and warrant, for the collection of such instalments as they become payable according to the vote of the said inhabitants; but the payment or collection of the last instalment shall not be extended beyond five years from

Tax how to be levied and collected.

TITLE 2.

the time such vote was taken; and no vote to levy any such tax shall be reconsidered except at an adjourned general or special meeting to be held within thirty days thereafter, and the same majority shall be required for reconsideration as is required to levy such tax.

Provision
in case a
district is
composed
of more
than part of
one town.

§ 72. In every case where a district embraces a part of more than one town, the town superintendents of the towns so in part embraced, upon application of the trustees of such districts or of those persons liable to pay taxes upon real property therein, shall proceed to enquire and determine whether the valuation of real property upon the several assessment rolls of said towns are substantially just as compared with each other, so far as such district is concerned, and if determined not to be so, they shall determine the relative proportion of taxes that ought to be assessed upon the real property of the parts of such districts so lying in different towns, and the trustees of such district shall thereupon assess the proportion of any tax thereafter to be raised according to the determination of said superintendents until the same shall be altered by said superintendents upon like application, using the assessment rolls of the several towns to distribute the said proportion among the persons liable to be assessed for the same. In cases where two superintendents shall be unable to agree, they shall summon a superintendent from some adjoining town, who shall unite in such inquiry and determination.

9 W., 36; 11 W., 90; 1 D., 214; 10 B., 290; 21 B., 207.

Site of
school
house not to
be changed
unless by
consent.

§ 73. Whenever a school house shall have been built or purchased for a district, the site of such school house shall not be changed, nor the building thereon be removed, as long as the district shall remain unaltered, unless by the consent, in writing, of the town superintendents of common schools, of the town or towns within which such district shall be situated, stating that in their opinion such removal is necessary; nor then, unless a majority of all the taxable inhabitants of said district to be ascertained by taking and recording the ayes and noes, at a special meeting called for that purpose, shall be in favor of such new site.

18 J. R., 351; 9 W., 36; 17 W., 437.

When
changed
former site
or lot may
be sold.

§ 74. Whenever the site of a school house shall have been changed as herein provided, the inhabitants of the district entitled to vote, lawfully assembled at any district meeting, shall have power by a majority of the votes of those present, to direct the sale of the former site or lot, and the buildings thereon, and appurtenances, or any part thereof, at such price, and upon such terms as they shall deem most advantageous to the district; and any deed duly executed by the trustees of such district, or a majority of them, in pursuance of such direction, shall be valid and effectual to pass all the estate or interest of such school district in the premises intended to be

conveyed thereby, to the grantee named in such deed; and when a credit shall be directed to be given upon such sale, for the consideration money, or any part thereof, the trustees are hereby authorized to take in their corporate name, such security by bond and mortgage, or otherwise, for the payment thereof, as they shall deem best, and shall hold the same as a corporation, and account therefor to their successor in office and to the district, in the manner they are now required by law to account for moneys received by them; and the trustees of any such district for the time being, may in their name of office, sue for and recover the moneys due and unpaid upon any security so taken by them, or their predecessors in office, with interest and cost.

§ 75. All moneys arising from any sale made in pursuance of the last preceding section, shall be appropriated to the payment of the expenses incurred in procuring a new site, and in removing or erecting a school house, or either of them, so far as such application thereof shall be deemed necessary.

§ 76. The clerk, trustees, collector and librarian of each school district, shall hold their respective offices until the annual meeting of such district next following the time of their appointment.

Laws of 1849, ch. 382.

§ 77. In case the office of trustee shall be vacated by the death, refusal to serve, removal out of the district, or incapacity of any such officer, and the vacancy shall not be supplied by a district meeting within one month thereafter, the town superintendent of the town may appoint any person residing in such district to supply such vacancy.

§ 78. In case of a vacancy in the office of school district clerk, collector or librarian, for any of the causes mentioned in the next preceding section, such vacancy may be supplied by appointment under the hands of the trustees of the district or a majority of them, and the persons so appointed shall hold their respective offices until the next annual meeting of the district, and until others are elected in their places.

§ 79. Every person duly chosen or appointed to any such office, who, without sufficient cause, shall refuse to serve therein, shall forfeit the sum of five dollars; and every person so chosen or appointed, and not having refused to accept, who shall neglect to perform the duties of his office, shall forfeit the sum of ten dollars.

6 Cow., 478; 14 How. P. R., 302.

§ 80. Any person chosen or appointed to any such office, may resign the same by presenting his resignation to the town superintendent of the town where such officer shall reside, who is authorised for sufficient cause shown to him, to accept the same, and the acceptance of such resignation shall be a bar to the recovery of either of the penalties mentioned in the preceding section. The town superintendent accepting

Avails how
to be
applied.

Tenure of
office.

Vacancy in
office how
supplied.

In the office
of district
clerk or
librarian.

Penalty for
refusing to
serve.

Officers
may resign.

TITLE 2.

the resignation shall give notice thereof to the clerk, or to one of the trustees of the school district, to which the officer resigning shall belong.

Clerk to record, &c.

§ 81. It shall be the duty of the clerk of each school district,

1. To record the proceedings of his district in a book to be provided for that purpose by the district, and to enter therein true copies of all reports made by the trustees of his district, to the town superintendent.

To give notice of special meetings.

2. To give notice of the time and place for special district meetings, when the same shall be called by the trustees of the district, to each inhabitant of such district liable to pay taxes, at least five days before such meeting shall be held, in the manner prescribed in the fifty-fifth section of this act:

To give notice of adjourned meetings.

3. To affix a notice in writing of the time and place for any adjourned district meeting, when the same shall be adjourned for a longer time than one month, in at least four of the most public places of such district, at least five days before the time appointed for such adjourned meeting:

Annual meeting.

4. To give the like notice of every annual district meeting:

To keep and preserve records, &c.

5. To keep and preserve all records, books and papers; belonging to his office, and to deliver the same to his successor in office; and in case of his neglect or refusal so to do, he shall be subject to a fine of not exceeding fifty dollars.

6 H., 647; 3 D., 526.

Of the duty of trustees of school districts.

§ 82. It shall be the duty of the trustees of every school district, and they shall have power,

Trustees to call special meetings.

1. To call special meetings of the inhabitants of such districts liable to pay taxes, whenever they shall deem it necessary and proper:

Special, annual and adjourned meetings.

2. To give notice of special, annual and adjourned meetings in the manner prescribed in the last preceding section, if there be no clerk of the district, or he be absent or incapable of acting:

To make out tax lists.

3. To make out a tax list of every district tax, voted by any such meeting, containing the names of all the taxable inhabitants residing in the district at the time of making out the list, and the amount of tax payable by each inhabitant, set opposite to his name:

To annex list to warrant.

4. To annex to such tax list a warrant, directed to the collector of the district, for the collection of the sums in such list mentioned:

To purchase or lease sites for school houses.

5. To purchase or lease a site for the district school house, as designated by a meeting of the district, and to build, hire or purchase, keep in repair, and furnish such school house with necessary fuel and appendages, out of the funds collected and paid to them for such purposes:

Custody of school house and

6. To have the custody and safe-keeping of the district school-house:

7. To contract with and employ all teachers in the districts:
10 B., 290.

ART. 5.
employ
teacher.

8. To pay the wages of such teachers when qualified, by giving them orders on the town superintendents for the public money belonging to their districts, so far as such moneys shall be sufficient for that purpose; and to collect the residue of such wages, from all persons liable therefor:

To pay
teachers
wages.

9. To divide the public moneys received by them, whenever authorized by a vote of their district, into not exceeding two portions for each year; to assign and apply one of such portions to each term during which a school shall be kept in such district, for the payment of the teacher's wages during such term; and to collect the residue of such wages, not paid by the proportion of public money allotted for that purpose, from the person liable therefor, as above provided:

To divide
public
moneys.

10. To exempt from the payment of the wages of teachers, either in part or wholly, such indigent persons within the district as they shall think proper, in any one quarter or term, and the same shall be a charge upon such district:

To exempt
indigent
persons.

11. To certify such exemptions and deliver the certificate thereof to the clerk of the district, to be kept on file in his office:

To certify
such ex-
emption.

12. To ascertain by examination of the school lists kept by such teachers, the number of days for which each person not so exempted shall be liable to pay for instruction, and the amount payable by each person:

To examine
school lists.

13. To make out a rate bill containing the name of each person so liable, and the amount for which he is liable; and to annex thereto a warrant for the collection thereof:

To make
out rate
bills.

14. To deliver such rate bill, with the warrant annexed, after the same shall have been made out and signed by them to the collector of the district, who shall execute the same in like manner with other warrants directed by such trustees to such collector for the collection of district taxes, and the collector to whom any such rate bill and warrant shall be delivered for collection shall possess the same power, be entitled to the same fees, and subject to the same restrictions and liabilities, with their bail and sureties as by this title is provided in proceedings to collect school district taxes.

To deliver
such bill
with war-
rant to col-
lector.

Laws of 1849, ch. 382; 2 D., 232; 4 H., 109; 7 W., 89; 8 Cow., 184; 1 Cal., 90; 11 W., 90; 24 W., 266; 1 D., 214; 10 B., 290; 21 B., 207; 13 B., 111; 10 W., 346; 16 W., 607.

Sec. 83 repealed by Laws of 1849, ch. 382.

§ 84. Where by reason of the inability to collect any tax or rate bill, there shall be a deficiency in the amount raised, the inhabitants of the district in district meeting shall direct the raising of a sufficient sum to supply such deficiency by tax, or the same shall be collected by rate bill, as the case may require.

Provision
in case of
deficiency.

TITLE 2.

Of the assessment and collection of school district taxes.

Tax to be apportioned on taxable inhabitants.

§ 85. In making out a tax list, the trustees of school districts shall apportion the same on all the taxable inhabitants of the district or corporations holding property therein, according to the valuations of the taxable property which shall be owned or possessed by them at the time of making out such list within such district or partly within such district and partly in an adjoining district, and upon all real estate lying within the boundaries of such district, the owners of which shall be non-residents, and which shall be liable to taxation for town or county purposes, and shall be situated within three miles of the site of the school-house in such district. But when it shall be ascertained that the proportion of any tax upon any lot, tract or parcel not occupied by any inhabitant would not amount to fifty cents, the trustees in their discretion may omit such lot, tract or parcel, from the tax list.

4 D., 125; 8 W., 518; 28 B., 54; 13 J. R., 444.

Persons liable to taxation.

§ 86. Any person working land under a contract for a share of the produce of such land, shall be deemed the possessor, so far as to render him liable to taxation therefor, in the district where such land is situate.

In cases where an agent improves land.

§ 87. Every person owning or holding any real property within any school district, who shall improve and occupy the same by his agent or servant, shall, in respect to the liability of such property to taxation, be considered a taxable inhabitant of such district, in the same manner as if he actually resided therein.

8 W., 518.

Tenants at will or for three years.

§ 88. Where any district tax for the purpose of purchasing a site for a school-house, or for purchasing, or building, keeping in repair, or furnishing such school-house with necessary fuel and appendages, shall be lawfully assessed and paid by any person, on account of any real property, whereof he is only tenant at will, or for three years, or for a less period of time, such tenant may charge the owner of such real estate with the amount of the tax so paid by him, unless some agreement to the contrary shall have been made by such tenant.

Provision in cases where land is not occupied and improved by owner or agent.

§ 89. When any real estate within a district, so liable to taxation, shall not be occupied and improved by the owner, his servant or agent, and shall not be possessed by any tenant, the trustees of any district at the time of making out any tax list by which any tax shall be imposed thereon, shall make and insert in such tax list a statement and description of every such lot, piece or parcel of land so owned by non-residents therein, in the same manner as required by law from town assessors in making out the assessment rolls of their towns; and if any such lot is known to belong to an incorporated company liable to taxation in such district, the name of such company shall be specified, and the value of such lot or piece of land shall be set down opposite to such description, which

value shall be the same that was affixed to such lot or piece of land in the last assessment roll of the town; and if the same was not separately valued in such roll, then it shall be valued in proportion to the valuation which was affixed in the said assessment roll to the whole tract, of which such lot or piece shall be a part.

7 W., 89; 1 D., 214.

§ 90. If any tax on the real estate of a non-resident mentioned in the tax list delivered to the collector shall be unpaid at the time he is required by law to return his warrant, he shall deliver to the trustees of such district an account of the taxes so remaining due, containing a description of the lots and pieces of and upon which any taxes were imposed as the same were stated in his tax list, together with the amount of the tax assessed on each, and upon making oath before any justice of the peace, or judge of any court of record, that the taxes mentioned in such account remain unpaid, and that after diligent efforts he has been unable to collect the same, he shall be credited by said trustees with the amount thereof.

Provision
in cases of
non-resi-
dent taxes
remaining
unpaid.

§ 91. Whenever the trustees of any school district shall receive such an account of unpaid taxes from any collector, they shall compare the same with the original tax list, and if found to be a true transcript, they shall add to such account a certificate to the effect that they have compared the same with the original tax list and found it to be correct, and shall immediately transmit such account, with the affidavit of the collector, and their certificate, to the treasurer of the county.

Notice
thereof to
be sent to
county
treasurer.

§ 92. Out of any moneys in the county treasury, raised for contingent expenses, the county treasurer shall pay to the trustees of the school district in which such taxes were imposed, the amount thereof so returned as unpaid.

Amount to
be paid by
treasurer.

§ 93. Such account, affidavit and certificate, shall be laid, by the county treasurer, before the board of supervisors of the county, who shall cause the amount of such unpaid taxes, with seven per cent of the amount in addition thereto, to be levied upon the lands of non-residents on which the same were imposed, and if imposed upon the lands of any incorporated company, then upon such company, in the same manner that the contingent charges of the county are directed to be levied and collected, and when collected the same shall be returned to the county treasury to reimburse the amount so advanced, with the expense of collection.

Supervisors
may cause
said
amount to
be levied
and col-
lected.

§ 94. Any person whose lands are included in any such account may pay the tax assessed thereon to the county treasurer, at any time before the board of supervisors shall have directed the same to be levied.

Owner may
pay the
same before
levied.

§ 95. The same proceedings in all respects shall be had for the collection of the amount so directed to be raised by the board of supervisors as are provided by law in relation to county taxes; and upon a similar account as in the case of

Proceed-
ings to be
had in
collecting
such
amounts.

TITLE 2.

county taxes of the arrears thereof uncollected, being transmitted by the county treasurer to the comptroller, the same shall be paid on his warrant to the treasurer of the county advancing the same; and the amount so assumed by the state shall be collected for its benefit, in the manner prescribed by law in respect to the arrears of county taxes upon lands of non-residents; or if any part of the amount so assumed consisted of a tax upon any incorporated company, the same proceedings may also be had for the collection thereof as provided by law, in respect to the county taxes assessed upon such company.

Valuation
of taxable
property.

§ 96. The valuations of taxable property shall be ascertained so far as possible, from the last assessment roll of the town; and no person shall be entitled to any reduction in the valuation of such property, as so ascertained unless he shall give notice of his claim to such reduction, to the trustees of the district, before the tax list shall be made out.

12 J. R., 412; 7 W., 89; 1 D., 214.

Provision
in case
reduction is
claimed.

§ 97. In every case where such reduction shall be duly claimed, and in every case where the valuation of taxable property cannot be ascertained, from the last assessment roll of the town, the trustees shall ascertain the true value of the property to be taxed, from the best evidence in their power, giving notice to the persons interested, and proceeding in the same manner as the town assessors are required by law to proceed, in the valuations of taxable property.

1 D., 214.

Exemption
in certain
cases for
school
house tax.

§ 98. Every taxable inhabitant of a district, who shall have been, within four years, set off from any other district without his consent, and shall, within that period have actually paid in such other district, under a lawful assessment therein, a district tax for building a school-house, shall be exempted by the trustees of the district where he shall reside, from the payment of any tax for building a school house therein.

District tax
when to be
assessed
and list
attached to
warrant.

§ 99. Every district tax shall be assessed, and the tax list thereof be made out by the trustees, and a proper warrant attached thereto, within thirty days after the district meeting in which the tax shall have been voted.

Laws of 1849, ch. 382; 22 B., 400; 20 B., 166; 4 H., 111; 2 D., 160, 232; 17 W., 437; 10 B., 290.

Tax list and
warrant
when to be
delivered to
collector

§ 100. It shall be the duty of the said trustees after the expiration of the said thirty days, to deliver the said tax list and warrant to the collector of the district and such collector is hereby authorized and directed, upon receiving his warrant: for two successive weeks, to receive such taxes as may be voluntarily paid to him, and in case the whole amount shall not be paid in, the collector shall proceed forthwith to collect the same. He shall receive for his services, on all sums paid in as aforesaid, one per cent, and upon all sums collected by him after the expiration of the time mentioned, five per cent;

and in case a levy and sale shall be necessarily made by such collector he shall be entitled to travelling fees at the rate of six cents per mile, to be computed from the school house in such district.

Laws of 1849, ch. 382.

§ 101. If by the neglect of any collector, any school moneys shall be lost to any school district, which might have been collected within the time limited in the warrant delivered to him for their collection, he shall forfeit to such district the full amount of the moneys thus lost, and shall account for and pay over the same to the trustees of such district, in the same manner as if they had been collected.

If the collector neglect he shall forfeit the amount lost.

6 Cow., 478; 13 W., 66.

§ 102. For the recovery of all forfeitures, and of balances in the hands of a collector which he shall have neglected to pay over, the trustees of the district may sue in their name of office, and shall be entitled to recover the same with interest and costs; and the moneys recovered shall be applied by them in the same manner as if paid without suit.

Forfeitures how to be recovered.

§ 103. Any collector to whom any such tax list and warrant may be delivered for collection, may execute the same in any other district or town in the same county, or in any other county, where the district is a joint district, and composed of territory from adjoining counties, in the same manner, and with the like authority as in the district in which the trustees issuing the said warrant may reside, and for the benefit of which said tax is intended to be collected, and the bail or sureties of any collector given for the faithful performance of his official duties, are hereby declared and made liable for any moneys received or collected on any such tax list and warrant, and may be prosecuted for the recovery thereof.

Taxes in joint districts how to be collected.

2 D., 86; 9 W., 281; 7 W., 89; 4 B., 246.

§ 104. It shall be the duty of the trustees of school districts, to procure for the use of their district, two bound blank books from time to time, as shall be necessary, in one of which the accounts of all moneys received and paid by the trustees, and a statement of all moveable property belonging to the district, shall be entered at large, and signed by such trustees, at or before each annual meeting in such district. In the other of the said books, the teachers shall enter the names of the scholars attending school, and the number of days they shall have respectively attended, and also the days on which such school shall have been inspected by the town superintendent; which entries shall be verified by the oath or affirmation of the teachers, and shall constitute the list on which rate bills shall be apportioned. The said books shall be preserved by the trustees as the property of the district, and shall be delivered to their successors.

Trustees to procure two blank books.

§ 105. Where the necessary fuel for the school of any district shall not be provided, by means of a tax on the inhabi-

Fuel how to be provided.

TITLE 1.

tants of the district, or otherwise, it shall be the duty of the trustees of the district to provide the necessary fuel, and levy a tax upon the inhabitants of the district to pay the same.

Laws of 1849, ch. 382.

Sec. 106, 107, 108, Repealed by Laws of 1849, ch. 382.

Expenses to be incurred by law or vote to be raised by tax.

§ 109. When the trustees of any school district are required or authorized by law, or by vote of their district, to incur any expense for such district, and when any expenses incurred by them are made by express provision of law a charge upon such district, they may raise the amount thereof by tax in the same manner as if the definite sum to be raised had been voted by a district meeting, and the same shall be collected and paid over in the same manner.

4 D., 297; 3 D., 114.

Warrant how issued.

§ 110. The warrant issued and annexed to any tax list or rate bill, shall be under the hands of the trustees of the district or a majority of them, and it shall not be necessary for the said trustees to affix their seals to any such warrant.

24 W., 266; 20 B., 165.

Effect of warrants issued by trustees.

§ 111. The warrants issued by the trustees of school districts for the collection of any district tax authorized to be levied, raised and collected by this title, or for the collection of any district school rate bill shall have the like force and effect as warrants issued by boards of supervisors of counties to collectors of taxes in towns; and the collector to whom any such warrant may be delivered for collection is hereby authorized and required to collect from every person in such tax list or rate bill named, the sum therein set opposite to his name, or the amount due from any person or persons specified therein, in the same manner that collectors are authorized to collect town and county charges.

16 W., 607; 13 W., 629.

Warrants may be renewed.

§ 112. If the sum or sums of money, payable by any person named in such tax list or rate bill, shall not be paid by him, or collected by such warrant within the time therein limited, it shall and may be lawful for the trustees to renew such warrant, in respect to such delinquent person; or in case such person shall not reside within their district, at the time of making out a tax list or rate bill, or shall not reside therein at the expiration of such warrant, and no goods or chattels can be found therein whereon to levy the same; the trustees may sue for and recover the same, in their name of office.

24 W., 266; 20 B., 165; 17 B., 146, 4 B., 444; 24 W., 269; 4 H., 109; 3 H., 498.

Errors in tax lists or rate bills how corrected.

§ 113. Whenever the trustees of any school district shall discover any error in a tax list or rate bill made out by them, they may with the approbation and consent of the state superintendent, after refunding any amount that may have been improperly collected on such tax list or rate bill, if the same shall be required, amend and correct such tax list or rate bill,

in conformity to law; and whenever more than one renewal of a warrant for the collection of any tax list or rate bill, may become necessary in any district, the trustees may make such further renewal, with the written approbation of the town superintendent of the town in which the school house of said district shall be located, to be endorsed upon such warrant.

3 D., 114.

§ 114. If the moneys apportioned to a district by the town superintendent shall not have been paid, it shall be the duty of the trustees thereof, to bring a suit for the recovery of the same, with interest, against the town superintendent in whose hands the same shall be, or to pursue such other remedy for the recovery thereof, as is or shall be given by law.

Town superintendent may be sued.

Of the annual reports of trustees, their duties and liabilities.

§ 115. The trustees of each school district shall, between the first and fifteenth days of January, in every year, make and transmit a report, in writing, to the town superintendent for such town, dated on the first day of January, in the year which it shall be transmitted.

Trustees to make an annual report.

§ 116^a. Every such report, signed and certified by a majority of the trustees making it, shall be delivered to the town superintendent, and shall specify,

Report to specify.

1. The whole time any school has been kept in their district during the year ending on the day previous to the date of such report, and distinguishing what portion of the time such school has been kept by qualified teachers:

The time school has been kept.

2. The amount of moneys received from the town superintendent during such year, and the manner in which such moneys have been expended:

Amount of moneys received.

3. The number of children taught in the district during such year:

No. of children.

4. The number of children residing in the district on the last day of December previous to the making of such report, over the age of five years, and under sixteen years of age, (except Indian children otherwise provided for by law,) and the names of the parents or other persons with whom such children shall respectively reside, and the number of children residing with each:

Name and age of each child.

5. The amount of money paid for teachers' wages, in addition to the public money paid therefor, the amount of taxes levied in said district for purchasing school-house sites, for building, hiring, purchasing, repairing and insuring school-houses, for fuel, for supplying deficiencies in rate bills, for district libraries, or for any other purpose allowed by law, and such other information in relation to the schools and the districts as the superintendent of common schools may from time to time require.

Amount paid for teacher's wages in addition to public money.

§ 117^a. It shall not be lawful for the trustees of any school district to include in their annual returns the names of any

Poorhouse children not to be included.

TITLE 2.

children who are supported at a county poor-house, or orphan asylum.

Report to include all children over 5 and under 15 years in district.

§ 118^a. The annual reports of trustees of school districts, of children residing in their district, shall include all over five and under sixteen years of age, who shall, at the date of such report, actually be in the district, composing a part of the family of their parents or guardians, or employers, if such parents, guardians, or employers reside at the time in such district, although such residence be temporary, but such report shall not include children belonging to the family of any person who shall be an inhabitant of any other district in this state, in which such children may by law be included in the reports of its trustees.

Indian children not to be included.

§ 119^a. The trustees of school districts shall not enumerate and include in their annual reports any Indian children residing on Indian reservations where schools are taught.

Children included in new district to attend its school.

§ 120^a. All children included in the reports of the trustees of any new school district shall be entitled to attend the schools of such district; and whenever it shall be necessary for the accommodation of the children in any district, the trustees thereof may hire, temporarily, any room or rooms for the keeping of schools therein, and the expense thereof shall be a charge upon such district.

Provision respecting districts formed out of two or more towns.

§ 121^a. Where a school district is formed out of two or more adjoining towns, it shall be the duty of the trustees of such district to make and transmit a report to the town superintendent for each of the towns out of which such district shall be formed, within the same time, and in the same manner, as is required by sections one hundred and fifteen, and one hundred and sixteen of this act; distinguishing the number of children over the age of five and under sixteen years, residing in each part of a district which shall be in a different town from the other parts, and the number of children taught, and the amount of school moneys received from each part of the district.

Provision respecting a neighborhood set off by itself.

§ 122^a. Where any neighborhood shall be set off by itself, the inhabitants of such separate neighborhood shall annually meet together and choose one trustee; whose duty it shall be every year, within the time limited for making district reports, to make and transmit a report in writing, bearing date on the first day of January, in the year in which it shall be transmitted to the town superintendent of the town from which such neighborhood shall be set off, specifying the number of children over the age of five and under sixteen years, residing in such neighborhood, the amount of moneys received from the town superintendent since the date of last report, and the manner in which the same has been expended.

Penalty for signing a false report.

§ 123^a. Every trustee of a school district, or separate neighborhood, who shall wilfully sign a false report to the town superintendent of his town, with the intent of causing such town superintendent to apportion and pay to his district

or neighborhood, a larger sum than its just proportion of the school moneys of the town, shall for each offence, forfeit the sum of twenty-five dollars, and shall also be deemed guilty of a misdemeanor.

§ 124^a. All property now vested in the trustees of any school district, for the use of schools in the district, or which may be hereafter transferred to such trustees for that purpose, shall be held by them as a corporation.

Property vested in trustees as a corporation.

§ 125^a. The trustees of each school district shall, once in each year render to the district, at its annual district meeting, a just and true account in writing, of all moneys received by them respectively for the use of their district; and of the manner in which the same shall have been expended, which account shall be delivered to the district clerk, and be filed and recorded by him.

Trustees to render an account annually.

§ 126^a. Any balance of such moneys, which shall appear from such account to remain in the hands of the trustees, or either of them, at the time of rendering the account, shall immediately be paid to some one or more of their successors in office.

Balance in their hands to be paid over.

§ 127^a. Every trustee who shall refuse or neglect to render such account, or to pay over any balance so found in his hands, shall for each offence forfeit the sum of twenty-five dollars.

Penalty for neglect.

1 D., 230.

§ 128^a. It shall be the duty of his successors in office to prosecute, without delay, in their name of office, for the recovery of such forfeiture; and the monies recovered shall be applied by them to the use and benefit of their district schools.

May be sued by successors.

§ 129^a. Such successors shall also have the same remedies for the recovery of any unpaid balance in the hands of a former trustee, or his representatives, as are given to the town superintendent against a former town superintendent and his representatives; and the moneys recovered shall be applied by them to the use of their district, in the same manner as if they had been paid without suit.

Provision for recovering former balances due.

14 B., 59.

§ 130^a. Every trustee of a school district who shall, while in office, neglect or refuse annually to render an account of the moneys received by him as such trustee, shall for each offence forfeit the sum of twenty-five dollars; and it shall be the duty of the town superintendent of the town in which such trustee may reside, to prosecute, without delay, in his name of office, for the recovery of such forfeiture; and the moneys recovered shall be applied by such superintendent to the use and benefit of the district school of the district to which such defaulting trustee shall belong.

Penalty for refusal or neglect to account by trustees.

1 D., 230.

TITLE 2.
Remedy for
recovering
unpaid
balances.

§ 131^a. Such town superintendent shall also have the same remedies for the recovery of any unpaid balance of moneys, in the hands of such delinquent trustee, in office, as are given to the town superintendents in office, against a former town superintendent; and the monies recovered shall be applied by such town superintendent to the use of the district to which the same may belong, and be paid over to the trustee or trustees of such district, who are not in default.

14 B., 59.

Right of
appeal by
parties
aggrieved.

§ 132^a. Any person conceiving himself aggrieved in consequence of any decision made:

1. By any school district meeting:
2. By the town superintendent in the forming or altering, or in refusing to form or alter any school district, or in refusing to pay any school moneys to any such district:
3. By the trustees of any district, in paying any teacher, or refusing to pay him, or in refusing to admit any scholar gratuitously into any school:
4. Or concerning any other matter under the present title, may appeal to the superintendent, who is hereby authorized and required to examine and decide the same, and the decision of the state superintendent shall be final and conclusive.

21 B., 257; this sec. was repealed by Laws of 1849, ch. 382, and restored by Laws of 1853, ch. 78.

Of school district libraries.

Money may
be raised
for district
libraries.

§ 133^a. The taxable inhabitants of each school district in the state, shall have power when lawfully assembled at any district meeting, to lay a tax on the district not exceeding ten dollars in any one year, for the purchase of a district library, consisting of such books as they shall in their district meeting direct, and such further sum as they may deem necessary for the purchase of a book case: The intention to propose such tax, shall be stated in the notice required to be given of such meeting.

Librarian
to be
appointed.

§ 134^a. The clerk of the district, or such other person as the taxable inhabitants may at their annual meeting designate and appoint by a majority of votes, shall be the librarian of the district, and shall have the care and custody of the library, under such regulations as the inhabitants may adopt for his government.

Taxes how
assessed
and col-
lected.

§ 135^a. The taxes authorized by the foregoing section to be raised, shall be assessed and collected in the same manner as a tax for building a school house.

Amount
appropri-
ated to
purchase
books for
libraries.

§ 136^a. The sum of fifty-five thousand dollars, together with an equal sum to be raised in the towns, and directed to be distributed to the several school districts of this state, by the fourth section of chapter two hundred and thirty-seven, of the Laws of eighteen hundred and thirty-eight, shall continue to be applied to the purchase of books for a district library, until otherwise directed; but whenever the number

of volumes in the district library of any district, numbering over fifty children between the ages of five and sixteen years, shall exceed one hundred and twenty-five; or of any district numbering fifty children or less, between the said ages, shall exceed one hundred volumes, the inhabitants of the district qualified to vote therein, may, at a special or annual meeting duly notified for that purpose, by a majority of votes, appropriate the whole, or any part of the library money belonging to the district for the current year, to the purchase of maps, globes, black-boards, or other scientific apparatus, for the use of the school: And in every district having the required number of volumes in the district library, and the maps, globes, black-boards, and other apparatus aforesaid, the said moneys, with the approbation of the state superintendent, may be applied to the payment of teachers' wages.

§ 137^a. The trustees of every school district shall be trustees of the library of such district; and the property of all books therein, and of the case and other appurtenances thereof, shall be deemed to be vested in such trustees, so as to enable them to maintain any action in relation to the same: It shall be their duty to preserve such books and keep them in repair, and the expenses incurred for that purpose, may be included in any tax list to be made out by them as trustees of a district, and added to any tax voted by a district meeting, and shall be collected and paid over in the same manner: The librarian of any district library shall be subject to the directions of the trustees thereof, in all matters relating to the preservation of the books and appurtenances of the library, and may be removed from office by them for wilful disobedience of such directions, or for any wilful neglect of duty.

Trustees of
district
library.

22 B., 511.

§ 138^a. Trustees of school districts shall be liable to their successors for any neglect or omission, in relation to the care and superintendence of district libraries, by which any books therein are lost or injured, to the full amount of such loss or injury in an action on the case, to be brought by such successors in their name of office.

Trustees
may be sued
for books
lost or
injured.

§ 139^a. A set of general regulations respecting the preservation of school district libraries, the delivery of them by librarians and trustees to their successors in office, the use of them by the inhabitants of the district, the number of volumes to be taken by any one person at any one time or during any term, the periods of their return, the fines and penalties that may be imposed by the trustees of such libraries for not returning, for losing or destroying any of the books therein, or for soiling, defacing, or injuring them, and the conditions upon which any school district may apply the library money to the payment of teachers' wages, may be framed by the state superintendent, and printed copies thereof shall be furnished to each school district of the state; which regulations shall be obligatory upon all persons and officers having charge of such

Regulations
respecting
the preser-
vation of
libraries to
be furnish-
ed to each
district.

TITLE 2.

libraries, or using or possessing any of the books thereof: Such fines may be recovered in an action of debt, in the name of the trustees of any such library, of the person on whom they are imposed, except such person be a minor; in which case they may be recovered of the parent or guardian of such minor, unless notice in writing shall have been given by such parent or guardian to the trustees of such library, that they will not be responsible for any books delivered such minor: And persons with whom such minors reside shall be liable in the same manner and to the same extent, in cases where the parent of such minor does not reside in the district.

Right of
appeal to
state super-
intendent.

§ 140^a. Any person conceiving himself aggrieved by any act or decision of any trustees of school districts, concerning district libraries, or the books therein, or the use of such books, or of any librarian, or of any district meeting in relation to their school library, may appeal to the state superintendent in the same manner as provided by law.

Adjoining
districts
may unite
their
library
moneys and
funds.

§ 141^a. The legal voters in any two or more adjoining districts may, in such cases as may be approved by the town superintendent, unite their library moneys and funds as they shall be received or collected, and purchase a joint library for the use of the inhabitants of such districts, which shall be selected by the trustees thereof, or by such persons as they shall designate, and shall be under the charge of a librarian to be appointed by them; and the foregoing provisions of this act shall be applicable to the said joint libraries, except that the property in them shall be deemed to be vested in all the trustees, for the time being, of the districts so united. And in case any such district shall desire to divide such library, such division shall be made by the trustees of the two districts whose libraries are so united, and in case they cannot agree, then such division shall be made by the town superintendent.

Provision
when libra-
ry money
shall be
withheld
from a
district.

§ 142^a. Where, by reason of the non-compliance with the conditions prescribed by law, the library money shall be withheld from any school district, the same may be distributed among other districts complying with such conditions, or may be retained and paid subsequently to the district from which the same was withheld, as shall be directed by the state superintendent, according to the circumstances of the case.

State super-
intendent
may select
libraries for
districts.

§ 143^a. The state superintendent, whenever requested by the trustees of a school district, under the directions of the legal voters of such district, may select a library for their use, and cause the same to be delivered to the clerk of the county in which such district is situated, at its expense.

Of miscellaneous provisions connected with the foregoing articles.

Provision
in case of
neglect to
report by
town super-
intendent.

§ 144^a. It shall be the duty of each county clerk, immediately after the first day of August in every year, in case the town superintendent of any town in his county shall have neglected to make to him his annual report, to give notice of such neglect to the clerk of the town, who shall immediately

notify such town superintendent for the purpose of making his report.

§ 145^a. Town superintendents, trustees, collectors and clerks of school districts, refusing or wilfully neglecting to make any report, or to perform any other duty required by law, or by regulations or decisions made under the authority of any statute, shall severally forfeit to their town, or to their district, as the case may be, for the use of the common schools therein, the sum of ten dollars for each such neglect or refusal, which penalty shall be sued for and collected by the supervisor of the town, and paid over to the proper officers to be distributed for the benefit of the common schools in the town or district to which such penalty belongs; and when the share of school or library money apportioned to any town or district, or school or any portions thereof, or any money to which a town or district would have been entitled, shall be lost in consequence of any wilful neglect of official duty by any town superintendent or trustees or clerks of school districts, the officers guilty of such neglect shall forfeit to the town or district the full amount, with interest, of the moneys so lost; and they shall be jointly and severally liable for the payment of such forfeiture.

Penalty for neglect or refusal to perform duty by school officers.

6 Cow., 478; 14 How. P. R., 302.

§ 146^a. In any suit which shall hereafter be commenced against town superintendents or officers of school districts, for any act performed by virtue of, or under color of their offices, or for any refusal or omission to perform any duty enjoined by law, and which might have been the subject of an appeal to the superintendent, no costs shall be allowed to the plaintiff in cases where the court shall certify that it appeared on the trial of the cause that the defendants acted in good faith. But this provision shall not extend to suits for penalties, nor to suits or proceedings to enforce the decisions of the superintendent.

Provision respecting costs of suit brought against school officers.

§ 147^a. A school for colored children may be established in any city or town of this state, with approbation of the commissioners or town superintendent of such city or town, which shall be under the charge of the trustees of the district in which such school shall be kept; and in places where no school districts exist, or where from any cause it may be expedient, such school may be placed in charge of trustees to be appointed by the commissioners or town superintendent of common schools of the town or city, and if there be none, to be appointed by the state superintendent. Returns shall be made by the trustees of such schools to the town superintendent, at the same time and in the same manner as now provided by law in relation to districts; and they shall particularly specify the number of colored children over five and under sixteen years of age, attending such school from different districts, naming such districts respectively, and the number from each. The town superintendent shall apportion and pay over to the

Provision respecting schools for colored children.

TITLE 2.

trustees of such schools, a portion of the money received by them annually, in the same manner as now provided by law in respect to school districts, allowing to such schools the proper proportion for each child over five and under sixteen years, who shall have been instructed in such school at least four months by a teacher duly licensed, and shall deduct such proportion from the amount that would have been apportioned to the district to which such child belongs; and in his report to the state superintendent, the town superintendent shall specially designate the schools for colored children in his town or city.

Duties
devolved
on the state
superin-
tendent.

§ 148^a. The state superintendent may cause to be printed a sufficient number of forms of reports by trustees of school districts and town superintendents, and of lists of pupils attending schools, and cause them to be transmitted to the several county clerks, for the use of those officers and of teachers of schools; and he shall cause title second of chapter fifteen and part first of the Revised Statutes to be printed, and shall insert therein all acts and parts of acts which have been passed by the legislature, connected with the subjects of the said title, which are now in force; and where any provisions of the said title have been altered by the subsequent acts, such provisions shall be varied so as to make them conformable to such alteration; but the original numbers of the sections shall be indicated in such mode as he shall judge proper, except as herein amended or altered. Copies of the said title, so amended shall be transmitted to the town superintendent, and all other officers charged with the performance of any duty under its provisions, with such explanations and instructions as may be deemed expedient.

This act to
be printed
in pamphlet
and distrib-
uted.

§ 149^a. The superintendent of common schools is hereby authorized and directed to cause to be printed in a pamphlet form, as many copies of this act and of the forms necessary to be used under its provisions, as he may deem sufficient for the information of the trustees of common schools, and to cause the same to be distributed for that purpose.

Repeal.

§ 150^a. All such provisions of law as are repugnant to or inconsistent with the provisions of this title, are hereby repealed; but nothing herein contained shall be so construed as to impair or affect any of the local provisions respecting the organization and management of schools in any of the incorporated cities or villages or towns of this state, except as the same are affected by the next preceding section of this act.

See 14 How. P. R., 302; 4 D., 180; 23 B., 176; 13 W., 28; 15 B., 323.

ARTICLE SEVENTH.*

ART. 7.
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LOCAL REGULATIONS RESPECTING COMMON SCHOOLS.

- SEC. 116^b. Duty of clerk of New-York in relation to money apportioned to that city.
 117^b. Sum to be raised by corporation.
 118^b. What sum to be deposited for commissioners of school money.
 119^b. Commissioners how appointed, number, &c.
 120^b. How vacancies supplied.
 121^b. Who ineligible to office.
 122^b. Corporation to designate schools entitled to monies.
 123^b. Trustees of schools designated to report; its contents.
 124^b. Duties of commissioners.
 125^b. Apportionment of school monies.
 126^b. Forfeiture for neglecting to produce proof.
 127^b. School may appeal from commissioners.
 128^b. Four wards of Troy to remain one district.
 129^b. Trustees of.
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 131^b. Forfeiture for neglecting to file it.
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 133^b. Common council may raise money.
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 135^b. Trustees to fix price of tuition.
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 137^b. 138^b, 139^b. Money allowed to city of Hudson, how apportioned, &c.
 140^b. Treasurer of Columbia to transmit his apportionment.
 141^b. Supervisors to make addition to amount.
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 143^b. How they shall distribute it.
 144^b. Assessors to designate inhabitants, who reside in districts.
 145^b. Money assigned to city of Albany, to be paid to trustees of Lancaster school.
 146^b. They shall account to county treasurer.
 147^b. Money assigned to Schenectady, how to be apportioned.
 148^b. Duty of treasurer of Schenectady county in relation thereto.
 149^b. Money how to be distributed.
 150^b. Annual reports to be made by trustees and teachers.
 151. Commissioners to divide certain territory into districts.
 152. Schools of Albany, Schenectady, and Hudson, to report.
 153. Poughkeepsie, and certain part of Catskill, each to be a district.
 154. To whom the monies for those districts to be paid.
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 156. Treasurer of Oneida to pay to treasurer of Utica, its proportion.
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 158. Trustees may raise money to keep school-house in repair.
 159 & 160. Monies appropriated to Flatbush.
 161. Trustees of Erasmus Hall academy, how to account.
 162. Trustees of Montgomery academy, to be trustees of district number 7.
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 164. Managers to report.
 165. This Title to what places and persons to extend.

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Clerk of
New York

§ 116^b. Whenever the clerk of the city and county of New-York, shall receive notice from the superintendent of common schools, of the amount of the monies apportioned to the city of New-York, for the support and encouragement of common

* Since this article was enacted, many laws have been passed, materially affecting its enactments, but not repealing this article, except as "inconsistent."

TITLE 2.

schools therein, he shall immediately lay the same before the corporation of the city, in common council convened.

Laws of 1824, 337, § 1 & 2. Laws of 1844, ch. 320, establishing the Board of Education in New York, repeals so much of sections 119^b to 127^b of this Article as is inconsistent with that act.

Corporation to raise money.

§ 117^b. The corporation shall annually raise and collect, by tax upon the inhabitants of the city, a sum of money equal to the sum specified in such notice, at the same time, and in the same manner as the contingent charges of the city are levied and collected.

Where deposited.

§ 118^b. The corporation shall, on or before the first day of May in every year, direct that a sum of money equal to the amount last received by the chamberlain from the common school fund, be deposited by him, together with the sum so received from the school fund, in one of the incorporated banks in the city, to the credit of the commissioners of school money for the city, and subject only to the drafts of the commissioners, drawn payable to the order of the treasurers of the respective societies or schools entitled thereto, or to some person duly authorised by the trustees of such societies or schools.

Commissioners how appointed, &c.

§ 119^b. The corporation shall, once in every three years, after the month of January in the year one thousand eight hundred and twenty-five, appoint from the inhabitants of the city, one from each ward, to be commissioners of school money, who shall hold their offices for three years, and until others are appointed in their places; and who, before they enter upon the duties thereof, shall take the oath of office prescribed in the constitution of this state.

Laws of 1824, 337, § 3; Laws of 1826, 93.

Vacancies.

§ 120^b. All vacancies occurring in the office of commissioner, shall be supplied by the corporation; and each person appointed to fill a vacancy, shall hold his office for the residue of the term for which his predecessor was appointed

Laws of 1824, 338, § 3.

Who intelligible.

§ 121^b. No trustee or other officer of any society or school, which shall be entitled to receive a share of the school monies, shall be appointed a commissioner of school monies.

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Monies, how distributed.

§ 122^b. The corporation shall, once at least in three years, by ordinance, designate the societies or schools which shall be entitled to receive a share of the school monies, and prescribe the rules and restrictions under which such monies shall be received by such societies or schools respectively. Such ordinance shall be published in two or more of the public newspapers of the city.

Laws of 1824, 338, § 4.

When trustees to report; contents of report.

§ 123^b. The trustees of every society or school thus designated, shall, on or before the fifteenth day of May in every year, make a report in writing, under their corporate seal, and

signed by their presiding officer and secretary, to the commissioners of school money ; which report shall state,

1. The average number of scholars over four and under sixteen years of age, which shall have been taught, free of expense to such scholars, in their school during the year preceding the first of May ; which number shall be ascertained by adding to the number of children on register at the commencement of each quarter, the number admitted during that quarter, and the total shall be considered the average for that quarter :

2. The average number that has actually attended such schools during the year, to be ascertained by the teachers keeping an exact account of the number of scholars present every school time, or half day ; which being added together, and divided by the whole number of school times in the year, shall be considered the average of attending scholars ; which average shall be sworn or affirmed to by the teachers :

3. The times during which such schools have been kept open during the year :

4. The amount of monies last received from the commissioners of school money, and the purposes for, and the manner in which the same shall have been expended :

5. A particular account of the state of the schools under their care, and of the property and affairs of such school or society.

Laws of 1824, 338, § 5.

§ 124^b. It shall be the duty of the commissioners of school money, Duties of commissioners.

1. To call for such reports, by advertisements in two or more of the public newspapers printed in the city of New-York, for at least two weeks preceding the fifteenth day of May in every year :

2. To apportion and pay, on or before the first day of June in every year, the amount of money deposited to their credit, to the several societies or schools which shall be designated by the ordinance of the corporation as entitled to receive a share thereof, and who shall have complied with the requisitions of this Article :

3. To visit and examine the societies and schools receiving such monies, twice at least in every year, and to examine their registers and other books ; and to require such other proof, on oath or otherwise, as they may think proper, relating to the subject matter of any report made by the trustees of such societies and schools, as to the number of scholars, and the appropriation of monies received by them, and as to all other matters connected with the interest of said schools in such city :

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4. To make a report to the corporation and to the superintendent of common schools, on or before the first day of December in every year, comprising all the matters contained

TITLE 2.

in the reports of the respective societies and schools, for the year next preceding the first day of May in the same year, and such other matters as they may deem necessary to promote the interests of said schools in the city of New-York :

5. To cause a copy of such report to be filed at the same time, in the clerk's office of the city and county.

Laws of 1824, 338, § 6, 7 & 8.

Apportionment, how made.

§ 125^b. The apportionment of school monies shall be made to each school according to the average number of children over the age of four and under sixteen years, who shall have actually attended such school during the preceding year; but no school shall be entitled to a portion of such monies, that has not been kept open at least nine months during the year.

When withheld.

§ 126^b. Every such society or school in the city of New-York, which shall neglect, when so required by the commissioners, to produce satisfactory proof before the first day of June in any year, relating to the subject matter of any report made by its trustees, shall forfeit its share of school monies for that year; and such share shall remain in the hands of the commissioners, to be distributed by them as a part of the school monies of the succeeding year.

Laws of 1824, 339, § 7.

Appeal.

§ 127^b. Every such society or school considering itself aggrieved by any decision of the commissioners of school money, may appeal therefrom to the superintendent of common schools, whose decision thereon shall be final.

Troy; school district in.

§ 128^b. The four first wards of the city of Troy shall be and remain one school district, and shall not be subject to alteration by the commissioners of common schools for that city.

Laws of 1816, 147, § 40 to 46.

Inspectors and trustees.

§ 129^b. The common council of the city shall annually, on the third Tuesday of May, appoint not exceeding thirteen trustees, to manage the concerns of the school in such district, and to perform the duties of inspectors and trustees thereof, as required by law and the ordinances of the common council.

Oath.

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§ 130^b. Every trustee, before he shall enter on the duties of his office, shall take and subscribe an oath or affirmation, in the form prescribed in the constitution of the state, before the mayor or recorder, or one of the aldermen or justices of the city, and shall file the same in the office of the clerk of the city.

Laws of 1816, 147, § 40 to 46; see Laws of 1834, ch. 296; 1837, ch. 379; 1838, ch. 43; 1842, ch. 273; 1841, ch. 350.

Penalty for neglect.

§ 131^b. Every person appointed a trustee, who shall refuse or neglect to file such oath or affirmation within fifteen days after he shall have received notice of his appointment, shall forfeit the sum of ten dollars, to be recovered in the manner prescribed in the "Act to incorporate the city of Troy," passed April 12th, 1816.

ART. 7.
School
monies,
how paid.

§ 132^b. The commissioners of common schools for the city shall pay to the chamberlain of said city, such a portion of the school monies to be distributed by them, as the district above designated may be entitled to receive, and the same shall be paid over by the chamberlain to the trustees of such district.

School-
house, how
repaired,
&c.

§ 133^b. The common council of the city shall have power to raise a sum not exceeding five hundred dollars annually, by tax on the inhabitants of such district, for repairing the school-house therein, and defraying the expenses of the school; which tax shall be assessed and collected as the other taxes of the city are assessed and collected, and when collected, shall be paid to the chamberlain of the city.

Aldermen
of the 5th
and 6th
wards not
to vote.

§ 134^b. In the execution of the powers which, by the preceding sections, are vested in the common council of the city, the aldermen of the fifth and sixth wards shall not be considered as members of such council, nor be permitted to vote on any question that may arise therein, touching the concerns of such district or its school.

Tuition to
be gradu-
ated, &c.

§ 135^b. The trustees of such school shall have power to exempt from the payment of tuition money and other charges, all such scholars and the persons sending them to school, as they shall judge unable to bear the charge thereof; and to fix the sum which each person liable to pay for the same shall be compelled to pay, having regard to the ability of the persons so liable; and to appoint a collector to collect such sums from the persons liable to pay the same.

Commis-
sioners and
inspectors,
how
chosen.

§ 136^b. There shall annually be elected, at the time and in the manner the other officers of the city are chosen, one commissioner of common schools in each of the wards of the city of Troy; and in each of the fifth and sixth wards, three inspectors of common schools for such wards shall be chosen, at the same time and in the same manner.

Hudson;
school
monies,
how ap-
propriated.

§ 137^b. The amount of monies allowed to the city of Hudson by the superintendent of common schools, shall be apportioned by the treasurer of the county of Columbia, between "The Hudson Lancaster School Society," and such common school districts and parts of districts as now are or may hereafter be organized without the bounds of the compact part of the city, in a ratio proportioned to the number of children over the age of five and under sixteen years, within such compact part, and the number of such children in such districts and parts of districts respectively, without such compact part.

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Laws of 1826, 92; 1817, 324, § 7; see Laws of 1841, ch. 350; 1843, ch. 12; 1844, ch. 132.

Treasurer
to pay
monies.

§ 138^b. The treasurer of the county of Columbia shall pay the amount thus apportioned to the Hudson Lancaster School to its treasurer, and the amount thus apportioned to such school districts and parts of districts to the commissioners of common schools for the city of Hudson.

TITLE 2
How
applied.

§ 139^b. The amount thus paid to the Hudson Lancaster School Society, shall be applied by the trustees of that society to the education of such poor children belonging to the city of Hudson as may be, in their opinion, entitled to gratuitous education, and to the support and maintenance of the school or schools established by such trustees.

Copy of
apportion-
ment.

§ 140^b. The treasurer of the county of Columbia shall transmit to the board of supervisors of the county, at their annual meeting, a certified copy of the apportionment made by him.

Supervisors
to raise
equal
amount.

§ 141^b. The supervisors shall annually add to the amount to be raised on the said districts and parts of districts respectively, for defraying town expenses, a sum equal to the amount thus apportioned to such districts and parts of districts, with the addition of five cents on the dollar for collector's fees, and shall cause the same to be collected at the same time and in the same manner as other taxes levied on towns are collected.

Collector,
how to pay.

§ 142^b. The collector shall pay over the monies so collected by him, after deducting five cents on the dollar for his fees, to the commissioners of common schools for the city of Hudson.

Commis-
sioners,
how to
distribute.

§ 143^b. The commissioners of common schools for that city shall distribute and pay, to the trustees of such school districts and parts of districts, the amount so received by them from the collector and the county treasurer, in the same proportion in which such monies were collected from each district and part of a district.

Assessors
to designate
inhabit-
ants.

§ 144^b. To enable the supervisors of the county to make such addition, it shall be the duty of the assessors of the ward within which such school districts and parts of districts shall be situate, to designate on their assessment rolls the inhabitants who reside within each of such districts and parts of districts.

Albany;
monies how
paid and
applied.

§ 145^b. The school monies apportioned by the superintendent of common schools, to the city of Albany, shall be paid by the treasurer of the county of Albany, to the trustees of the Lancaster school in that city, to be applied to the education of such poor children residing in the same, who shall be, in the opinion of such trustees, entitled to a gratuitous education.

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How ac-
counted for.

§ 146^b. The trustees of such society shall annually account to the treasurer of the county of Albany, for the faithful application of such monies, according to the laws relating to common schools.

Laws of 1819, 207, § 36; see Laws of 1830, ch. 240; 1837, ch. 213, 358; 1844, ch. 128; 1845, ch. 245.

Schenecta-
dy: school
monies,
how ap-
propriated.

§ 147^b. The amount of the monies allowed to the city of Schenectady by the superintendent of common schools, and which may be raised from taxes in said city, under the laws relative to common schools, shall be apportioned by the treasurer of the county of Schenectady, between the Schenec-

tady Lancaster school society and such common school districts and parts of districts as now are, or hereafter may be organized without the bounds of the compact part of the said city, called the police, and in a ratio proportioned to the number of children over the age of five, and under sixteen years, within such compact part, and the number of such children in such districts and parts of districts respectively, without such compact part.

Act of the 21st of April, 1828, 437, § 5, 6, 7 & 9.

§ 148^b. The treasurer of the county of Schenectady shall pay the amount thus apportioned to the Schenectady Lancaster school society, to its treasurer, and the amount thus apportioned to such school districts and parts of districts, to the commissioners of common schools for the city of Schenectady.

Treasurer's duty.

§ 149^b. The commissioners of common schools for said city, shall distribute and pay to the trustees of such school districts and parts of districts, the amount so received by them from the county treasurer, in proportion to the number of children residing in each, over the age of five and under that of sixteen years, as the same shall have appeared from the last annual report of their respective trustees.

Distribution.

§ 150^b. The trustees of the Schenectady Lancaster school society, and all teachers of common schools within the compact part of said city, shall make an annual report to the clerk of the county of Schenectady, within the same period that other district school reports are to be made, of the number of children within the compact part of said city over the age of five and under the age of sixteen years.

Annual report.

§ 151. The commissioners of schools of the city, shall divide that portion of the territory of the first and second wards of the city, not comprised within the bounds of the police, into such number of school districts, as they may deem convenient, and may alter and regulate such districts, according to the provisions of this Title; and the provisions of this Title shall apply to all districts so established.

Territory to be divided by commissioners.

Laws of 1827, 156, § 1; see Laws of 1829, ch. 324; 1839, ch. 222.

§ 152. It shall be the duty of the trustees of the Lancaster school in the city of Albany, of the corporation of the city of Hudson, and of the trustees of the Schenectady Lancaster school society, to make an annual report to the superintendent of common schools, in such form as shall be prescribed by him, of the state and condition of the schools for whose benefit the school monies shall have been applied in the cities of Albany, Hudson and Schenectady.

Annual reports of Lancaster schools. [495]

Laws of 1819, 267, § 16; 1822, 287, § 3.

§ 153. The village of Poughkeepsie, and that part of the village of Catskill which lies east of the creek of that name, shall each form a permanent school district, not subject to alteration by the commissioners of common schools for the towns in which such villages are or shall be situate.

Poughkeepsie and Catskill school districts.

TITLE 2.
Monies how
paid.

§ 154. The school monies which each of the above permanent districts shall, from time to time, be entitled to receive from the commissioners of common schools, in their respective towns, shall be paid, in Poughkeepsie, to the trustees of "The Poughkeepsie Lancaster school society," and in Catskill to "the trustees of the Catskill Lancaster school society."

Laws of 1814, 47, § 6; 1817, 79; see Laws of 1843, ch. 211.

Trustees
how to
report.

§ 155. The trustees of the above societies shall be so far respectively considered the trustees of the permanent districts to which they belong, as that they shall be bound to report to the commissioners of common schools, in their respective towns, the number of children over the age of five and under sixteen in their respective districts.

Utica;
school
monies how
paid.

§ 156. The treasurer of the county of Oneida shall pay to the treasurer of the village of Utica, the proportion of school monies apportioned by the superintendent of common schools to the town of Utica, to be expended by the trustees of the village, for the support of a free school in the same, for the education of such poor children therein, as shall, in the opinion of the board of trustees, be entitled to gratuitous education.

Laws of 1817, 225, § 27 & 29.

Trustees of
village to
report and
account.

§ 157. The village of Utica shall form one school district; and the trustees of the village shall make an annual report to the clerk of the county of Oneida, within the same period that other district reports are to be made, of the number of children in said village over the age of five and under sixteen years, and of the state and condition of their schools; and shall account to the treasurer of the county of Oneida, for the monies paid to them.

To raise tax
for repairs
and fuel.

(496)

§ 158. The trustees of the village of Utica, shall have power annually to cause to be raised and levied on the inhabitants thereof, such sum of money not exceeding one hundred dollars, as shall, in the opinion of the trustees, be sufficient to keep the school-house erected for said free school in repair, and to purchase fuel and other appendages therefor; which sum shall be collected, in addition to the sums authorised to be raised in said village, by adding to the tax assessed on each inhabitant his due proportion, according to the last previous assessment of the real and personal property of the inhabitants; which additional sum shall be collected by the collector of said village, as other village taxes are collected.

Laws of 1817, 225, § 27 & 29; see Laws 1842, ch. 137; 1844, ch. 131.

Flatbush;
monies
paid to
academy.

§ 159. The school monies appropriated to that part of the town of Flatbush, commonly called "the Old Town," excepting such portion thereof as may be applicable to the instruction of children living on the borders of the old town, and sent to school in the adjoining towns, shall be annually paid, by the several officers whose duty it shall be to pay the same, to the trustees of the Academy of Erasmus Hall, so long as

no common school district from said Academy is taught in said "Old Town," according to the general provisions of law.

Laws of 1819, 91; 1844, ch. 234.

§ 160. The trustees receiving such monies shall give their receipt therefor, and shall apply the monies received to the education of such poor children living in "the old town" and sent to the academy, as in their opinion, shall be entitled to a gratuitous education. How applied.

§ 161. The trustees of the academy shall account to the commissioners of common schools of the town of Flatbush, for the faithful application of the school monies received by them, and shall make an annual report to the same commissioners on the first day of May in each year, of the progress and number of the children of "the old town" so taught in the academy. How accounted for.

§ 162. The trustees of Montgomery Academy in the town of Montgomery, and their successors in office, shall be the trustees of school district number seven in said town, which district shall be hereafter permanent and unalterable. Montgomery academy.

Laws of 1815, 93.

§ 163. The commissioners of common schools of the town of Flushing shall pay to the managers of the Free School Association, in school district number five, the school monies apportioned to said district, so long as no common school is taught in said district according to the general provisions of law. Flushing; free school association.

Laws of 1815, 121.

§ 164. The managers of the free school association in such school district shall make an annual report to such commissioners, within the same period that other district school reports are to be made, of the number of children in the district over the age of five and under sixteen years, and of the state and condition of their school; and shall account to such commissioners for the monies paid to them. To make annual report, &c..

§ 165. In all cases where no special provision is made, the general provisions, regulations and penalties of this Title, shall be construed to apply to the several cities, villages and towns, to which this Article relates, and to their several commissioners and inspectors of common schools, and trustees and collectors of school districts. Application of this Title.

TITLE III.

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OF THE DUTIES OF THE SUPERINTENDENT OF COMMON SCHOOLS, IN RELATION TO THE INSTRUCTION OF THE DEAF AND DUMB.

- SEC. 1. Institution in New-York, and other such institutions, subject to his visitation.
2. Duties of the superintendent in relation to such institutions.

§ 1. The institution of the deaf and dumb in the city of New-York, and every other similar institution incorporated, or to Subject to visitation.

TITLE 4.

Duties of
superinten-
dent.

be incorporated in this state, shall be subject to the visitation of the superintendent of common schools.

§ 2. It shall be the duty of the superintendent, as such visitor,

1. To inquire from time to time into the expenditures of each institution, and the systems of instruction pursued therein respectively :

2. To visit and inspect the schools belonging thereto, and the lodgings and accommodations of the pupils :

3. To ascertain, by a comparison with other similar institutions, whether any improvements in instruction and discipline can be made; and for that purpose to appoint from time to time suitable persons to visit the schools :

4. To suggest to the directors of such institution, and to the legislature, such improvements as he shall judge expedient :

5. To make an annual report to the legislature on all the matters before enumerated, and particularly as to the condition of the schools, the improvement of the pupils, and their treatment in respect to board and lodging.

Laws of 1827, 76; see Laws of 1832, ch. 223.

TITLE IV.

OF THE GOSPEL AND SCHOOL LOTS.

SEC. 1. Trustees, a corporation for certain purposes.

2. Trustees to give bond.

3. Their powers and duties.

4. Auditors of town to report upon accounts of trustees.

5 & 6. Lands and money, how disposed of.

7. When the share of any town is to be paid to supervisor, &c.

Trustees a
corpora-
tion.

§ 1. The trustees elected in any town in this state, having lands assigned to it, for the support of the gospel or of schools, or of both, shall be a corporation for the purposes of their office, by the name of "The trustees of the gospel and school lot" in that town for which they are elected.

Laws of 1846, ch. 186, abolished this office of Trustee and enacted that all its powers and duties should be exercised by the town superintendent, and by Laws of 1856, ch. 179, by the supervisors.

To give
bonds.

§ 2. Before they enter on the duties of their office, they shall execute a bond to the supervisor of the town, in such penalty and with such sureties as such supervisor shall approve, for the faithful performance of such duties.

[1898]
Their
powers and
duties.

§ 3. The trustees, besides the ordinary powers of a corporation, shall have power, and it shall be their duty,

1. To take and hold possession of the gospel and school lot of their town :

2. To lease the same for such time not exceeding twenty-one years, and upon such conditions as they shall deem expedient :

3. To sell the same with the advice and consent of the inhabitants of the town, in town-meeting assembled, for such price and upon such terms of credit as shall appear to them most advantageous :

4. To invest the proceeds of such sales in loans, secured by bond and mortgage upon unincumbered real property of the value of double the amount loaned :

5. To purchase the property so mortgaged upon a foreclosure, and to hold and convey the property so purchased whenever it shall become necessary :

6. To re-loan the amount of such loans repaid to them, upon the like security :

7. To apply the rents and profits of such lots, and the interest of the money arising from the sale thereof, to the support of the gospel and schools, or either, as may be provided by law, in such manner as shall be thus provided :

8. To render a just and true account of the proceeds of the sales and the interest on the loans thereof, and of the rents and profits of such gospel and school lots, and of the expenditure and appropriation thereof, on the last Tuesday next preceding the annual town-meeting in each year, to the board of auditors of the accounts of other town officers :

9. To deliver over to their successors in office, all books, papers and securities relating to the same, at the expiration of their respective offices : and,

10. To take therefor a receipt, which shall be filed in the clerk's office of the town.

§ 4. The board of auditors in each town, shall annually report the state of the accounts of the trustees of the gospel and school lots in that town, to the inhabitants thereof, at their annual town-meeting. Accounts.

§ 5. Whenever a town having lands assigned to it for the support of the gospel or of schools, shall be divided into two or more towns, or shall be altered in its limits by the annexing of a part of its territory to another town or towns, such lands shall be sold by the trustees of the town, in which such lands were included immediately before such division or alteration ; and the proceeds thereof, shall be apportioned between the towns interested therein, in the same manner as the other public monies of towns, so divided or altered, are apportioned. Lands of town divided.

§ 6. The shares of such monies, to which the towns shall be respectively entitled, shall be paid to the trustees of the gospel and school lots of the respective towns, and shall thereafter be subject to the provisions of this Title. [499]
Shares, to whom paid.

§ 7. If in either of such towns, trustees of gospel and school lots shall not have been chosen, or there be none in office, the share of such town shall be paid to the supervisor ; and the town, at its next annual town-meeting, and annually thereafter, shall choose such trustees in the same manner as if gospel and school lots had originally been assigned to it ; which trustees shall have charge of the monies so paid to the supervisor, and shall be subject to all the duties and liabilities, and possess all the powers imposed or conferred in this Title. n.

See Laws of 1845, ch. 288 ; 1829, ch. 287. This Title was compiled from the following sources : 1 R. L., 219, 221 & 222 ; Session Laws of 1813, ch. 100 ; Laws of 1821, 239, § 4 ; and Laws of 1826, 23.

TITLE I.

TITLE V.

OF THE LEWISTON SCHOOL FUND.

- Smo. 1. Designation of the fund; interest appropriated.
 2 & 3. Commissioners of the fund, term of office, &c.
 4. To give bonds.
 5. Their powers and duties.
 6. Trustees of common schools in Lewiston, to give bond, &c.
 7. Who to sue for breach of bonds.

Perpetual
fund.

§ 1. The property now belonging to the Lewiston school fund, shall remain a continual fund, the interest of which shall be inviolably appropriated to the support of common schools, in the village of Lewiston, under the direction of the commissioners of the Lewiston school fund for the time being.

Commis-
sioners.

§ 2. The commissioners of the Lewiston school fund, shall not exceed three in number, and shall hold their offices for two years, and until others shall be appointed. In case of vacancies in office of such commissioners, the vacancies shall be filled, and all appointments hereafter be made, by the governor and senate, in the same manner that other appointments are made.

Tenure of
offices.

§ 3. All such commissioners hereafter to be appointed, shall continue in office for two years, and until others shall be appointed; unless in cases of appointments to fill vacancies, where the term shall expire with that of the other commissioners.

To give
bond.

§ 4. Every person hereafter appointed a commissioner of the Lewiston school fund, shall, before he enters on the duties of his office, give to the trustees of the corporation of the village of Lewiston, a bond, in the penalty of fifteen thousand dollars, with two or more sureties, conditioned that he shall faithfully execute the duties of his office, which bond shall be deposited with the clerk of the said corporation.

[500]

Their
powers and
duties.

§ 5. The commissioners of the Lewiston school fund shall have power, and it shall be their duty,

1. To sell or lease the lots of land in the village of Lewiston, belonging to the said fund, on such terms as they may judge most conducive to the interest of the fund:

2. To certify to the commissioners of the land-office, on receiving payment for such sales, a description of the land sold, the price, the time when sold, the names of the purchasers, and that the consideration money and interest has been fully paid:

3. To loan all monies which may come to their hands belonging to the fund:

4. To take a bond on making such loans, to themselves as such commissioners, secured by a mortgage on unincumbered real property, of at least double the value of the sum loaned, exclusive of buildings:

5. To collect all bonds and mortgages, or other debts, due to the fund:

TITLE 1.

6. To pay over to the trustees of common schools in the said village, all monies received by the commissioners for interest on loans, or rents of land belonging to said fund :

7. To keep suitable books and accounts of all matters relating to the management of said fund, which shall be open to the inspection of the inhabitants of the village, at all reasonable times : and,

8. To deliver, at the expiration of their several offices, to the remaining commissioners, or their successors in office, all the books and papers relating to said fund.

§ 6. Before the trustees of common schools, in said village, shall be entitled to receive such monies from the commissioners, the trustees shall execute a bond to the supervisor of the town of Lewiston, in such penalty and with such sureties as the supervisor shall approve, conditioned that the trustees shall faithfully apply such monies towards the support of schools in the village of Lewiston, for the benefit of such of its inhabitants as shall have resided in the village at least six months ; and shall render a just and true account of the expenditure of such monies, to the supervisor, when required.

Trustees to give bond.

§ 7. It shall be the duty of the trustees of the corporation of the village of Lewiston, in case of any breach of the condition of the bond given by such commissioners, and of the supervisor of the town of Lewiston, in case of any breach of the condition of the bond given by the trustees of common schools for the village of Lewiston, to sue for and recover on said bonds, all damages which may have accrued by such breaches, for the use of said schools.

Bonds to be sued.

This Title is a revision of the act of 1826. Laws of 1826, 239.

CHAP. XVI.

[501]

Of Highways, Bridges, and Ferries.

(Took effect January 1, 1838.)

TITLE 1. — Of highways and bridges.

TITLE 2. — Of the Regulation of ferries.

TITLE I.

OF HIGHWAYS AND BRIDGES.

ART. 1. — Of the officers entrusted with the care and superintendence of highways and bridges ; and their general powers and duties.

ART. 2. — Of the persons liable to work on highways, and the making of assessments therefor.

ART. 3. — Of the duties of overseers in regard to the performance of labor upon highways, and of the performance of such labor, or the commutation therefor.

ART. 4. — Of the laying out of public and private roads, and of the alteration or discontinuance thereof.

ART. 5. — Regulations and penalties concerning the obstruction of highways, and encroachments thereon.

TITLE 1.

ART. 6. — Of the erection, repairing, and preservation of bridges.

ART. 7. — Miscellaneous provisions of a general nature.

ARTICLE FIRST.

OF THE OFFICERS ENTRUSTED WITH THE CARE AND SUPERINTENDENCE OF HIGHWAYS AND BRIDGES; AND THEIR GENERAL POWERS AND DUTIES.

- SBC.**
1. Commissioners to have care of highways and bridges.
 2. They have power to lay out and discontinue roads.
 3. To account to auditors of town accounts.
 4. To deliver statement of improvements necessary.
 5. They shall cause mile-stones to be erected.
 - 6 & 7. Duties of overseers of highways.
 8. When to make new assessment.
 9. Commissioners to cause guide-posts to be erected.
 10. Overseers to keep them in repair.
 11. Commissioners may procure a scraper, &c.
 12. If monies are insufficient, deficiency assessed.
 13. Compensation of overseers for excess of work.
 14. If office of overseer vacant, commissioners to fill it.
 15. Commissioners to cause warrant to be filed.
 16. Penalties on overseers for neglect of duties.
 17. Commissioners may prosecute for neglect of duty.
 18. Commissioners to forfeit \$10 for refusing to prosecute.

Commissioners,
their duty.

§ 1. The commissioners of highways in the several towns in this state, shall have the care and superintendence of the highways and bridges therein; and it shall be their duty,

1. To give directions for the repairing of the roads and bridges, within their respective towns:

2. To regulate the roads already laid out, and to alter such of them as they, or a majority of them, shall deem inconvenient:

[502] 3. To cause such of the roads used as highways, as shall have been laid out but not sufficiently described, and such as shall have been used for twenty years but not recorded, to be ascertained, described, and entered of record in the town clerk's office:

4. To cause the highways, and the bridges which are or may be erected over streams intersecting highways, to be kept in repair:

5. To divide their respective towns into so many road districts as they shall judge convenient, by writing under their hands, to be lodged with the town clerk, and by him to be entered in the town book; such division to be made annually, if they shall think it necessary, and in all cases to be made at least ten days before the annual town-meeting:

6. To assign to each of the said road districts, such of the inhabitants liable to work on highways, as they shall think proper, having regard to proximity of residence as much as may be; provided however, that whenever the commissioners of any town shall have neglected, for the period of one year, at any time after any public road or highway shall have been laid out, and title thereto acquired by due process of law to

open or work the same, or any part thereof, and whenever any number of inhabitants of any town in or through which the said road has been laid out, shall have given ten days' notice to the commissioners of said town that they desire to apply the whole, or any part of their highway labor to the working of said road, the said commissioners shall forthwith assign the said inhabitants to such road, direct the highway labor for which they are annually assessed to be applied to the same, and cause the same to be worked and put in good order for vehicles and travellers, within one year under the direction of any of the said inhabitants whom such commissioners may appoint as an overseer of the labor so to be applied to such road, and when the number of days labor assessed in the current year to such inhabitants, as their annual highway tax is not sufficient to put such road in good order, as aforesaid, then the said inhabitants may anticipate the whole, or any part of the highway labor assessed, and to be assessed against them, for a period not exceeding three years; but from no one of the districts into which the said town is divided shall more than one half of its annual labor be taken and applied to any road not embraced in said district; and,

7. To require the overseers of highways, from time to time, and as often as they shall deem necessary, to warn all persons assessed to work on highways, to come and work thereon, with such implements, carriages, cattle or sleds, as the said commissioners, or any one of them, shall direct.

2 R. L., 270, § 1 & 2; Laws of 1853, ch. 63; 12 N. Y., 54; 6 N. Y., 264; 24 B., 170; 2 H., 469; 24 W., 492; 5 S. S. C., 297; 10 How. P. R., 243; 32 B., 641; 27 B., 627; 6 H., 463; 7 W., 476; 4 H., 593; 1 D., 510; 7 B., 416; 8 B., 645; 11 B., 457; 15 B., 471; 19 B., 179.

§ 2. The commissioners of highways shall have power, in the manner and under the restrictions herein after provided, to lay out on actual survey, such new roads in their respective towns as they may deem necessary and proper; and to discontinue such old roads and highways, as shall appear to them, on the oaths of twelve freeholders of the same town, to have become unnecessary.

To lay out
and discon-
tinue roads.

5 N. Y., 572; 1 W., 370; 19 B., 179.

§ 3. The commissioners of highways of each town, shall render to the board of town auditors at their annual meeting for auditing the accounts of town officers, an account in writing, stating,

To account.

1. The labor assessed and performed in such town:
2. The sums received by such commissioners for fines and commutations, and all other monies received under this Chapter:

3. The improvements which have been made on the roads and bridges in their town, during the year immediately preceding such report, and an account of the state of such roads and bridges: and,

4. A statement of the improvements necessary to be made

ARTICLE I.

on such roads and bridges, and an estimate of the probable expense of making such improvements, beyond what the labor to be assessed in that year, will accomplish.

2 R. L., 270, § 31.

Repairs of
roads and
bridges.

[503]

§ 4. The commissioners of highways of each town, shall deliver to the supervisor of such town, a statement of the improvements necessary to be made on the roads and bridges, together with the probable expense thereof; which supervisor shall lay the same before the board of supervisors at their next meeting. The board of supervisors shall cause the amount so estimated, to be assessed, levied and collected, in such town, in the same manner as other town charges; but the monies to be raised in any such town, shall not exceed in any one year, the sum of two hundred and fifty dollars.

2 R. L., 270, § 31; 1 H., 53; 7 W., 476; see Laws of 1857, ch. 615; 12 N. Y., 58.

Mile-
stones.

§ 5. It shall be the duty of the commissioners of highways of each town, to cause mile-boards or stones, to be erected, where not already erected, on the post-roads, and such other public roads in their town, as they may think proper, at the distance of one mile from each other, with such fair and legible inscriptions as they may think proper.

2 R. L., 270, § 32.

Overseers,
their duty.

§ 6. It shall be the duty of the overseers of highways in each town,

1. To repair and keep in order the highways within the several districts for which they shall have been elected:

2. When so required by the commissioners of highways, or any one of them, to warn all persons assessed to work on the highways in their respective districts, to come and work thereon:

3. To cause the noxious weeds on each side of the highway within their respective districts, to be cut down or destroyed twice in each year, once before the first day of July, and again before the first day of September; and the requisite labor shall be considered highway work: and,

4. To collect all fines and commutation money, and to execute all lawful orders of the commissioners.

2 R. L., 270, § 3; 11 W., 667.

th.

§ 7. It shall be the further duty of the overseers of highways, once in every month, from the first day of April until the first day of December, to cause all the loose stones lying on the beaten track of every road within their respective districts, to be removed; and to cause the monuments erected or to be erected as the boundaries of highways, to be kept up and renewed, so that the extent of such roads may be publicly known.

2 R. L., 270, § 15.

New assess-
ment to be

§ 8. When the quantity of labor assessed on the inhabitants of any road district by the commissioners, shall be deemed

ART. 1.
made by
them.

insufficient by the overseer of such district to keep the roads therein in repair, it shall be the further duty of such overseer, to make another assessment on the actual residents in such district, in the same proportion, as near as may be, and not exceeding one third of the number of days assessed in the same year by the commissioners on the inhabitants of such district; and the labor so assessed by an overseer, shall be performed or commuted for, in like manner as if the same had been assessed by the commissioners of highways.

2 R. L., 270, § 6.

§ 9. The commissioners of highways of each town, shall cause guide-posts, with proper inscriptions and devices, to be erected at the intersections of all the post-roads in their town, and at the intersection of such other roads therein as they may deem necessary.

Guide-
posts.

2 R. L., 281, § 34.

§ 10. It shall be the duty of the overseers of highways of each town, to maintain and keep in repair, at the expense of the town, such guide-posts as may have been erected by order of the commissioners, within the limits of the districts for which they shall have been respectively elected or appointed.

[504]

ib.

2 R. L., 281, § 34.

§ 11. The commissioners of highways, whenever they shall think it necessary or useful, may direct and empower any overseer of highways in their respective towns, to procure a good and sufficient iron or steel-shod scraper, and plough, or either of them, for the use of his road district; to be paid for, by the monies arising from commutations and fines within such district.

Scrapers
and
ploughs.

2 R. L., 281, § 11.

§ 12. In case such monies shall be insufficient for the purpose, the deficiency shall be assessed by the overseers upon the inhabitants of the districts, in the proportion they are respectively assessed on the assessment roll of said town; and if any one so assessed, shall neglect or refuse to pay such assessment, the same may be sued for and recovered by the overseer.

ib.

§ 13. If any overseer shall be employed more days in executing the several duties enjoined on him by this Chapter, than he is assessed to work on the highway, he shall be paid for the excess at the rate of ~~seventy-five cents~~ per day, and be allowed to retain the same out of the monies which may come into his hands for fines under this Chapter; but he shall not be permitted to commute for the days he is assessed.

Excess of
work by
overseers.

am. 1862

2 R. L., 281, § 3.

§ 14. If any person chosen to the office of overseer of highways, shall refuse to serve, or if his office shall become vacant, the commissioners of highways of the town, shall, by warrant under their hands, appoint some other person in his

Vacancy in
their office.

TITLE 1.

stead; and the overseer so appointed, shall have the same powers, be subject to the same orders, and liable to the same penalties, as overseers chosen in town-meeting.

2 R. L., 281, § 14.

Proceed-
ings.

§ 15. The commissioners making the appointment, shall cause such warrant to be forthwith filed in the office of the town clerk, who shall give notice to the person appointed as in other cases.

Penalties
on over-
seers.

§ 16. Every overseer of highways who shall refuse or neglect either,

1. To warn the people assessed to work on the highways, when he shall have been required so to do, by the commissioners, or either of them :

2. To collect the monies that may arise from fines or commutations : or,

[505] 3. To perform any of the duties required by this Chapter, or which may be enjoined on him by the commissioners of highways of his town, and for the omission of which, a penalty is not hereinafter provided :

Shall for every such refusal or neglect, forfeit the sum of ten dollars, to be sued for by the commissioners of highways of the town; and when recovered, to be applied by them in making and improving the roads and bridges therein.

To be pro-
secuted by
commis-
sioners.

§ 17. It shall be the duty of the commissioners of highways of each town, whenever any person resident in their town shall make complaint that any overseer of highways in such town, has refused or neglected to perform any of the duties enumerated in the last preceding section, and shall give or offer to such commissioners, sufficient security to indemnify them against the costs which may be incurred in prosecuting for the penalty annexed to such refusal or neglect, forthwith to prosecute such overseer for the offence complained of.

Penalty for
neglect.

§ 18. If such commissioners of highways shall refuse or neglect to prosecute for such penalty, they shall, in every such case, forfeit the sum of ten dollars, to be recovered by the person who shall have made such complaint, and given or offered such security.

Laws of 1826, 229, § 6; 11 W., 667; see Laws of 1855, ch. 255.

ARTICLE SECOND.

OF THE PERSONS LIABLE TO WORK ON HIGHWAYS, AND THE MAKING OF ASSESSMENTS THEREFOR.

SEC. 19. Who, and what property liable to be assessed for highway labor.

20. When commissioners to meet.

21. Overseers to deliver list of persons liable to work.

22. Non-resident lands how to be ascertained and appraised.

23. Town clerk to deliver lists to commissioners.

24. Mode of proceeding to assess labor.

25. Copy of each list to be delivered to overseers.

26. Names of persons omitted, to be added.

27. Appeals to county judges.

Sec. 28. Proceedings of judges thereon.

29. Commissioners to credit persons working private roads.

30. When amount assessed to be distinguished from tax.

31. Tenants when assessed, entitled to a deduction.

§ 19. Every person owning or occupying land in the town in which he or she resides, and every male inhabitant above the age of twenty-one years residing in the town, when the assessment is made, shall be assessed to work on the public highways in such town; and the lands of non-residents, situated in such town, shall be assessed for highway labor, as herein after directed.

Persons liable to be assessed.

2 R. L., 271, § 4; Laws of 1826, 228, § 1; 12 W., 392; see Laws of 1832, ch. 107; 1835, ch. 154.

§ 20. The commissioners of highways of each town, shall meet within eighteen days after they shall be chosen, at the place of town-meeting, on such day as they shall agree upon, and afterwards at such other times and places as they shall think proper.

Meetings of commissioners.

§ 21. Each of the overseers of highways shall deliver to the clerk of the town, within sixteen days after his election or appointment, a list subscribed by such overseer, of the names of all the inhabitants in his road district, who are liable to work on the highways.

[505]

Lists of inhabitants.

2 R. L., 271, § 4; Laws of 1826, 228, § 1.

§ 22. The commissioners of highways in each town, at their first or any subsequent meeting, shall make out a list and statement of the contents of all lots, pieces or parcels of land within such town, owned by non-residents therein. Every lot so designated, shall be described in the same manner as is required from assessors, and its value shall be set down opposite to such description; such value shall be the same as was affixed to such lot in the last assessment roll of the town; and if such lot was not separately valued in such roll, then in proportion to the valuation which shall have been affixed to the whole tract of which such lot shall be a part.

Non-resident lands, how appraised.

Laws of 1835, ch. 154.

§ 23. The town clerk shall deliver the lists filed by the overseers, to the commissioners of highways of the town; who shall proceed, at their next meeting, or at some subsequent meeting, to ascertain, estimate and assess the highway labor to be performed in their town, the then ensuing year.

Lists of inhabitants.

§ 24. In making such estimate and assessment, the commissioners shall proceed as follows:

Proceedings in making assessments.

1. The whole number of days'-work to be assessed in each year, shall be ascertained, and shall be at least three times the number of taxable inhabitants in such town:

2. Every male inhabitant being above the age of twenty-one years, (excepting ministers of the gospel, and priests of every denomination, paupers, idiots, and lunatics,) shall be assessed at least one day:

FILE 1
How
applied.

§ 139^b. The amount thus paid to the Hudson Lancaster School Society, shall be applied by the trustees of that society to the education of such poor children belonging to the city of Hudson as may be, in their opinion, entitled to gratuitous education, and to the support and maintenance of the school or schools established by such trustees.

Copy of
apportion-
ment.

§ 140^b. The treasurer of the county of Columbia shall transmit to the board of supervisors of the county, at their annual meeting, a certified copy of the apportionment made by him.

Supervisors
to raise
equal
amount.

§ 141^b. The supervisors shall annually add to the amount to be raised on the said districts and parts of districts respectively, for defraying town expenses, a sum equal to the amount thus apportioned to such districts and parts of districts, with the addition of five cents on the dollar for collector's fees, and shall cause the same to be collected at the same time and in the same manner as other taxes levied on towns are collected.

Collector,
how to pay.

§ 142^b. The collector shall pay over the monies so collected by him, after deducting five cents on the dollar for his fees, to the commissioners of common schools for the city of Hudson.

Commis-
sioners,
how to
distribute.

§ 143^b. The commissioners of common schools for that city shall distribute and pay, to the trustees of such school districts and parts of districts, the amount so received by them from the collector and the county treasurer, in the same proportion in which such monies were collected from each district and part of a district.

Assessors
to designate
inhabi-
tants.

§ 144^b. To enable the supervisors of the county to make such addition, it shall be the duty of the assessors of the ward within which such school districts and parts of districts shall be situate, to designate on their assessment rolls the inhabitants who reside within each of such districts and parts of districts.

Albany ;
monies how
paid and
applied.

§ 145^b. The school monies apportioned by the superintendent of common schools, to the city of Albany, shall be paid by the treasurer of the county of Albany, to the trustees of the Lancaster school in that city, to be applied to the education of such poor children residing in the same, who shall be, in the opinion of such trustees, entitled to a gratuitous education.

[404]

How ac-
counted for.

§ 146^b. The trustees of such society shall annually account to the treasurer of the county of Albany, for the faithful application of such monies, according to the laws relating to common schools.

Laws of 1819, 207, § 36; see Laws of 1830, ch. 240; 1837, ch. 213, 358; 1844, ch. 128; 1845, ch. 245.

Schenecta-
dy: school
monies,
how ap-
propriated.

§ 147^b. The amount of the monies allowed to the city of Schenectady by the superintendent of common schools, and which may be raised from taxes in said city, under the laws relative to common schools, shall be apportioned by the treasurer of the county of Schenectady, between the Schenec-

tady Lancaster school society and such common school districts and parts of districts as now are, or hereafter may be organized without the bounds of the compact part of the said city, called the police, and in a ratio proportioned to the number of children over the age of five, and under sixteen years, within such compact part, and the number of such children in such districts and parts of districts respectively, without such compact part.

Act of the 21st of April, 1828, 437, § 5, 6, 7 & 9.

§ 148^b. The treasurer of the county of Schenectady shall pay the amount thus apportioned to the Schenectady Lancaster school society, to its treasurer, and the amount thus apportioned to such school districts and parts of districts, to the commissioners of common schools for the city of Schenectady.

Treasurer's duty.

§ 149^b. The commissioners of common schools for said city, shall distribute and pay to the trustees of such school districts and parts of districts, the amount so received by them from the county treasurer, in proportion to the number of children residing in each, over the age of five and under that of sixteen years, as the same shall have appeared from the last annual report of their respective trustees.

Distribution.

§ 150^b. The trustees of the Schenectady Lancaster school society, and all teachers of common schools within the compact part of said city, shall make an annual report to the clerk of the county of Schenectady, within the same period that other district school reports are to be made, of the number of children within the compact part of said city over the age of five and under the age of sixteen years.

Annual report.

§ 151. The commissioners of schools of the city, shall divide that portion of the territory of the first and second wards of the city, not comprised within the bounds of the police, into such number of school districts, as they may deem convenient, and may alter and regulate such districts, according to the provisions of this Title; and the provisions of this Title shall apply to all districts so established.

Territory to be divided by commissioners.

Laws of 1827, 156, § 1; see Laws of 1829, ch. 324; 1839, ch. 222.

§ 152. It shall be the duty of the trustees of the Lancaster school in the city of Albany, of the corporation of the city of Hudson, and of the trustees of the Schenectady Lancaster school society, to make an annual report to the superintendent of common schools, in such form as shall be prescribed by him, of the state and condition of the schools for whose benefit the school monies shall have been applied in the cities of Albany, Hudson and Schenectady.

Annual reports of Lancaster schools. [495]

Laws of 1819, 267, § 16; 1822, 287, § 3.

§ 153. The village of Poughkeepsie, and that part of the village of Catskill which lies east of the creek of that name, shall each form a permanent school district, not subject to alteration by the commissioners of common schools for the towns in which such villages are or shall be situate.

Poughkeepsie and Catskill school districts.

ARTICLE 1.

3. The residue of such days'-work, shall be apportioned upon the estate real and personal of every inhabitant of such town, as the same shall appear by the last assessment roll of the said town, and upon each tract or parcel of land, of which the owners are non-residents, contained in the list made as aforesaid:

[507]

4. If after such apportionment, there shall be any deficiency in the number of days'-work determined by the commissioners, to be performed in their town, the then ensuing year, such deficiency shall be assessed upon the estates real and personal of the inhabitants of the town, and upon each tract or parcel of land of which the owners are non-residents according to the last assessment roll:

5. The commissioners shall affix to the name of each person named in the lists furnished by the overseers, and also to the description of each tract or parcel of land contained in the list prepared by them, of non-resident lands, the number of days which such person or tract shall be assessed for highway labor, as herein directed, and the commissioners shall subscribe such lists, and file them with the town clerk.

Laws of 1835, ch. 154; 31 B., 139; see Laws of 1837, ch. 431; 1832, ch. 107.

Copies of
lists.

§ 25. The commissioners shall direct the clerk of the town to make a copy of each list, and shall subscribe such copies; after which, they shall cause the several copies to be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed.

2 R. L., 271, § 4; Laws of 1826, 228, § 1.

Names
omitted,
&c.

§ 26. The names of persons left out of any such list, and of new inhabitants, shall from time to time be added to the several lists, and they shall be rated, by the overseers in proportion to their real and personal estate, to work on the highways, as others rated by the commissioners on such lists, subject to an appeal to the commissioners.

Appeals by
non-resi-
dents.

§ 27. Whenever any non-resident owner shall conceive himself aggrieved by the assessments of any commissioners of highways, in carrying into effect the provisions of this Article, it shall be lawful for such owner, or his agent, within thirty days after such assessment, to appeal to any three judges of the court of common pleas of the county in which such land is situated.

Proceed-
ings.

§ 28. It shall be the duty of such judges within twenty days thereafter, to convene and decide on such appeal, the said owner or agent giving notice to the commissioners of the time of the meeting of the judges; and their decision, or that of any two of them, shall be final and conclusive in the premises. Each judge shall be entitled to receive for his services on such appeal, two dollars for each day he may be employed thereon, to be paid by the party appealing, if the proceedings of the commissioners and overseers shall be affirmed; but if reversed or modified favorable to the party

appealing, to be levied and paid as part of the contingent expenses of such town.

ART. 2.

§ 29. It shall be the duty of the commissioners of highways of each town, to credit such persons as live on private roads, and work the same, so much on account of their assessments, as such commissioners may deem necessary to work such private road; or to annex such private roads to some of the highway districts.

Private roads

[508]

2 R. L., 277, § 21.

§ 30. Whenever the commissioners of highways shall assess the occupant, for any land not owned by such occupant, they shall distinguish in their assessment lists, the amount charged upon such land, from the personal tax, if any, of the occupant thereof. But when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year to work on the highways on account of the same land.

Certain assessments to be separate.

Laws of 1826, 228, § 1.

§ 31. Whenever any tenant of any land for a less term than twenty-five years, shall be assessed to work on the highways, for such land, pursuant to the last preceding section, and shall actually perform such work, or commute therefor, he shall be entitled to a deduction from the rent due, or to become due from him, for such land, equal to the full amount of such assessment, estimating the same at the rate of ~~sixty-two and a half cents~~ per day; unless otherwise provided for by covenant or agreement, between such tenant and his landlord

Tenant to deduct assessment.

Amended 1864

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Laws of 1826, 228, § 5; see Laws of 1849, ch. 250; 1837, ch. 431; 1832, ch. 107.

ARTICLE THIRD.

OF THE DUTIES OF OVERSEERS IN REGARD TO THE PERFORMANCE OF LABOR UPON HIGHWAYS; AND OF THE PERFORMANCE OF SUCH LABOR OR THE COMMUTATION THEREFOR.

SEC. 32. Overseers to give notice to persons assessed.

33. Notice when to be given to agents.

34. How given where no agent.

35. Persons to work unless they commute.

36. Persons commuting, to pay after notice.

37. Overseers may require a team, &c.

38. Persons may appear by substitutes.

39. Persons not working faithfully, to forfeit one dollar.

40. Penalty for not commuting or not appearing, &c.

41. Overseers to make complaint of delinquents.

42. Justice to summon delinquent.

43. If no sufficient cause be shown, delinquent to be fined.

44. Money collected, how applied.

45. Penalties collected, to be set off against assessment.

46. Excuse not to exempt from commuting or working.

47. Overseers to return non-resident labor unpaid.

48. Penalty for neglect.

49. Lists of non-resident labor to be laid before supervisors.

TITLE I.

- Smo. 50. Board to cause amount to be collected.
 51. Overseers to account to commissioners annually.
 52. To pay over all monies in their hands.
 53. If overseer refuse, &c., to forfeit five dollars.

Notice to
work.
Where to
be done.

[509]

§ 32. It shall be the duty of the overseers of highways, to give at least twenty-four hours' notice to all persons assessed to work on the highways, and residing within the limits of their respective districts, of the time and place, when and where they are to appear for that purpose, and with what implements; but no person being a resident of the town, shall be required to work on any highway, other than in the district in which he resides, unless he shall elect to work in some district where he has any land; and in such case he may, with the approbation of the commissioners of highways, apply the work assessed in respect to such land, in the district where the same is situated.

2 R. L., 272, § 9; 27 B., 629.

Notice to
non-resi-
dents.

§ 33. It shall be the duty of the several overseers of highways, to notify the agent of every non-resident landholder, whose lands are assessed, (if such agent reside in the town where such assessment is made) of the number of days such non-resident is assessed, and of the time when, and the place where the labor is to be performed; which notice shall be given at least five days previous to the time appointed.

Ib.

§ 34. If the overseer cannot ascertain that such non-resident has an agent within such town, he shall affix a written notice on the outer door of the building in which the last town-meeting in such town was held, containing a list of the names of such non-residents, when known, and a description of the tracts of land comprised in his list, together with the number of days' labor, assessed on each tract, and a specification of the time when, and place where such labor is to be performed; which notice shall be posted at least twenty days before the time appointed for performing such labor.

Commuta-
tion for
work.

§ 35. Every person liable to work on the highways, shall work the whole number of days for which he shall have been assessed; but every such person, other than an overseer, may elect to commute for the same, or for some part thereof, at the rate of ~~sixty-two and a half cents~~ for each day; in which case such commutation money shall be paid to the overseer of highways, of the district in which the person commuting shall reside, to be applied and expended by such overseer in the improvement of the roads and bridges in the same district.

2 R. L., 272, § 8; 8 N. Y., 325.

When to be
paid.

§ 36. Every person intending to commute for his assessment, or for any part thereof, shall, within twenty-four hours after he shall be notified to appear and work on the highways, pay the commutation money for the work required of him by such notice; and the commutation shall not be considered as complete until such money be paid.

8 N. Y., 325.

Amend 1864

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ART. 2.
Teams, &c.

§ 37. Every overseer of highways shall have power to require a team; or a cart, wagon or plough, with a pair of horses or oxen, and a man to manage them; from any person having the same within his district, who shall have been assessed three days or more, and who shall not have commuted for his assessment; and the person furnishing the same upon such requisition, shall be entitled to a credit of three days for each day's service therewith.

2 R. L., 272, § 7.

§ 38. Every person assessed to work on the highways and warned to work, may appear in person or by an able bodied man as a substitute; and the person or substitute so appearing, shall actually work eight hours in each day, under the penalty of twelve and a half cents for every hour such person or substitute shall be in default, to be imposed as a fine on the person assessed. [510]
Substitutes; hours to work.

2 R. L., 272, § 12.

§ 39. If any such person or his substitute shall, after appearing, remain idle, or not work faithfully, or hinder others from working, such offender shall, for every offence, forfeit the sum of one dollar. Penalty for neglect, &c.

2 R. L., 272, § 9.

§ 40. Every person so assessed and duly notified, who shall not commute, and who shall refuse or neglect to appear as above provided, shall forfeit for every day's refusal or neglect, the sum of one dollar. If he was required to furnish a team, carriage, man or implements, and shall refuse or neglect to comply, he shall be fined as follows: Penalties for not working, &c.

1. For wholly omitting to comply with such requisition, three dollars for each day;
2. For omitting to furnish a cart, wagon or plough, one dollar for each day;
3. For omitting to furnish a pair of horses or oxen, one dollar for each day;
4. For omitting to furnish a man to manage the team, one dollar for each day.

2 R. L., 272, § 7.

§ 41. It shall be the duty of every overseer of highways, within six days after any person so assessed and notified, shall be guilty of any refusal or neglect for which a penalty or fine is prescribed in this Title, unless a satisfactory excuse shall be rendered to him for such refusal or neglect, to make complaint on oath, to one of the justices of the peace of the town. Com-plaints, how made.

2 R. L., 272, § 9; 5 D., 102; 1 J. R., 515; 10 J. R., 470.

§ 42. The justice to whom such complaint shall be made, shall forthwith issue a summons directed to any constable of the town, requiring him to summon such delinquent, to appear forthwith before such justice, at some place to be specified in the summons, to shew cause why he should not Proceed-ings.

TITLE 1.

be fined according to law for such refusal or neglect; which summons shall be served personally, or by leaving a copy at his personal abode.

3 J. R., 474; 9 J. R., 229.

Proceed-
ings.

§ 43. If, upon the return of such summons, no sufficient cause shall be shown to the contrary, the justice shall impose such fine as is provided in this Title for the offence complained of, and shall forthwith issue a warrant under his hand and seal, directed to any constable of the town where such delinquent shall reside, commanding him to levy such fine, with the costs of the proceedings, of the goods and chattels of such delinquent.

[§11]
Id.

§ 44. The constable to whom such warrant shall be directed, shall forthwith collect the monies therein mentioned. He shall pay the fine when collected, to the justice who issued the warrant, who is hereby required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is overseer.

2 R. L., 272, § 9.

Penalties to
be set off.

§ 45. Every penalty collected for a refusal or neglect to appear and work on the highways, shall be set off against the assessment upon which it was founded, estimating every dollar collected as a satisfaction for one day's work.

Excuses.

§ 46. The acceptance by an overseer of any excuse for refusal or neglect, shall not in any case, exempt the person excused for commuting for, or working, the whole number of days for which he shall have been assessed during the year.

Proceed-
ings to col-
lect non-
resident
labor un-
paid.

§ 47. Every overseer of highways, shall, on or before the first day of October, in each year, make out and deliver to the supervisor of his town, a list of all the lands of non-residents, and of persons unknown, which were taxed on his lists, on which the labor assessed by the commissioners of highways has not been paid, and the amount of labor unpaid; and the said overseer, previous to delivering such list, shall make and subscribe an affidavit thereon, before some justice of the peace of such town, that he has given the notice required by the thirty-third and thirty-fourth sections of this Title, and that the labor for which such land is returned, has not been performed.

Proceed-
ings, &c.

§ 48. If any overseer shall refuse or neglect to deliver such list to the supervisor, as provided in the last preceding section, or shall refuse or neglect to make the affidavit as therein directed, he shall, for every such offence, forfeit the sum of five dollars, and also the amount of tax or taxes for labor remaining unpaid, at the rate of ~~sixty-two and a-half~~ cents for each day; to be recovered by the commissioners of highways of the town, and to be applied by them in making and improving the roads and bridges in such town.

§ 49. It shall be the duty of the supervisors of the several

towns, to receive the lists of the overseers of highways, when delivered pursuant to the preceding forty-seventh section, and to lay the same before the board of supervisors of the county.

§ 50. It shall be the duty of such board at their next meeting, to cause the amount of such arrearages of labor, (estimating a day's labor at ~~sixty-two and a half cents~~), to be levied on the lands so returned, and to be collected in the same manner that the contingent charges of the county are levied and collected, and to order the same, when collected, to be paid over to the commissioners of highways of the town, to be by them applied to the construction and improvement of the roads and bridges in the district, for whose benefit the labor was originally assessed.

Proceed-
ings, &c.

Amended 1864
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§ 51. Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town-meeting, in his town, within the year for which he is elected or appointed, render to one of the commissioners of highways of the town, an account in writing, verified by his oath, and containing,

Annual re-
turn of
overseers.

1. The names of all persons assessed to work on the highways in the district of which he is overseer:

2. The names of all those who have actually worked on the highways, with the number of days they have so worked:

3. The names of all those who have been fined, and the sums in which they have been fined:

4. The names of all those who have commuted, and the manner in which the monies arising from fines and commutations have been expended by him:

5. A list of all lands which he has returned to the supervisor for non-payment of taxes, and the amount of tax on each tract of land so returned.

2 R. L., 272, § 13; see Laws of 1833, ch. 149.

§ 52. Every such overseer shall also then and there pay to the commissioner, all monies remaining in his hands unexpended, to be applied by the commissioners in making and improving the roads and bridges in the town, in such manner as they shall direct.

To pay over
monies.

§ 53. If any overseer shall refuse or neglect to render such account, or if having rendered the same, he shall refuse or neglect to pay any balance which may then be due from him, he shall, for every such offence, forfeit the sum of five dollars, to be recovered, with the balance of monies remaining in his hands, by the commissioners of highways of the town, and to be applied in making and improving the roads and bridges. It shall be the duty of the commissioners of highways to prosecute for such penalty in every instance in which no return is made.

Penalty,
how col-
lected.

See Laws of 1832, ch. 107; 1833, ch. 149.

TITLE I.

ARTICLE FOURTH.*

OF THE LAYING OUT OF PUBLIC AND PRIVATE ROADS, AND
OF THE ALTERATION OR DISCONTINUANCE THEREOF.

- SEC. 54. Who may apply for alteration or discontinuance of road.
55. When commissioners shall lay out, &c., road, survey to be made thereof.
56. Town clerk to put up copy of order laying out, &c., road.
57. Roads not to be laid through gardens, &c., without consent.
58. No highway to be laid out through enclosed land, unless certified.
59. Persons applying for road, to cause notices to be posted.
60. Freeholders to examine as to necessity of road.
- [513] 61. If they deem road necessary, to make certificate thereof.
62. Before commissioners lay out road, to give notice.
63. If road laid out, description of it to be filed.
64. Damages may be fixed. Road not opened until damages assessed.
- 65, 66, 67, 68 & 69. Damages how assessed by a jury.
70. Damages and expenses how collected.
71. When value of a discontinued road to be deducted.
72. When commissioners of different towns disagree.
73. When highway upon line of two towns.
74. Such highway to be divided into two or more road districts.
75. Each district to belong to town to which allotted.
76. Provision as to all such highways heretofore laid out.
77. When private road applied for, freeholders to examine.
78. If road necessary, to make certificate thereof.
79. By whom and for what purposes private roads used.
80. Public roads not to be less, and private, not more than three rods wide.
- 81 & 82. Applications to discontinue an old road.
83. Papers relating to laying out, &c., road, to be filed.
84. Persons aggrieved, may appeal.
85. Judges to whom appeal made, to have jurisdiction.
86. Appeal to be in writing.
87. Judges to give notice to commissioners, &c.
88. Notice to be served before time mentioned therein.
89. Judges to convene; attendance of witnesses; decision conclusive.
90. Each judge entitled to two dollars a day.
91. If decision be reversed, judges to lay it out.
92. If office of a judge become vacant, another to be associated.
93. Road fixed by judges, not to be altered, &c., without their order.
94. If no judge be in commission, application to whom made.
95. Application to be accompanied by certificate.
96. When commissioners to give notice to remove fences.
97. When notice to be given, if determination be appealed from.
98. Acts of commissioners confirmed since 31st December, 1805.
99. Highways not worked in six years, to cease to be a road.
100. What deemed public highways.
101. Public highways used for twenty years, to be opened to width of two rods.

Who may
apply.

§ 54. Every person liable to be assessed for highway labor, may apply to the commissioners of highways of the town in which he shall reside, to alter or discontinue any road, or to lay out any new road. Every such application shall be in writing, addressed to the commissioners, and signed by the person applying.

6 B., 607; 15 B., 471; 19 B., 189; see Laws of 1836, ch. 122.

* See amendatory act Laws of 1836, ch. 122; 1838, ch. 214.

ART. 4
Survey.

§ 55. Whenever the commissioners of highways shall lay out, alter or discontinue any road, either upon application to them or otherwise, they shall cause a survey to be made of such road, and shall incorporate such survey in an order to be signed by them, and to be filed and recorded in the office of the town clerk, who shall note the time of recording the same

20 N. Y., 252; 1 Cow., 23; 10 How. P. R., 209.

§ 56. It shall be the duty of the town clerk, whenever any order of the commissioners for laying out, altering or discontinuing a road shall be received by him, to post a copy of such order on the door of the house where the town-meeting is usually held; and the time herein after limited for appealing from any such order, shall be computed from the time of recording the same.

Order to be
posted, &c.

2 R. L., 283, § 40; 6 B., 611; 19 B., 179.

§ 57. No public or private road shall be laid out through any orchard or garden, without the consent of the owner thereof, if such orchard be of the growth of four years or more, or if such garden have been cultivated for four years or more, before the laying out of such road. Nor shall any such road be laid out through any buildings; or any fixtures or erections for the purposes of trade or manufactures, or any yards or enclosures necessary to the use and enjoyment thereof; without the consent of the owner.

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Consent of
owner,
when neces-
sary.

2 R. L., 283, § 16; 5 N. Y., 572; 6 B., 607; 3 H., 460; 6 Pal., 86; 4 Pal., 519; 4 Cow., 190; 2 H., 443.

§ 58. No highway shall be laid out through enclosed, improved or cultivated land, without the consent of the owner or occupant thereof, unless certified to be necessary by the oath of twelve reputable freeholders of the town, in the manner herein after provided.

Oath, &c.,
when neces-
sary.

2 R. L., 283, § 16; 7 W., 265; 6 W., 464; 4 Cow., 190; 27 B., 96; 3 H., 458; 19 B., 179.

§ 59. Every person who shall apply for the laying out of a highway through any such land, shall cause notices in writing to be posted up at three of the most public places of the town, specifying, as near as may be, the route of the proposed highway, the several tracts of land through which the same is proposed to be laid, and the time and place at which the freeholders will meet to examine the ground. Every such notice shall be posted up at least six days before the time specified therein for the meeting of the freeholders.

Notice of
application.

Laws of 1826, 228.

§ 60. If twelve reputable freeholders of the town, not interested in the lands through which the road is to be laid, nor of kin to the owner thereof, shall appear at the time and place specified in the notice, they shall then be sworn by a justice of the peace or any officer authorised to administer

Proceed-
ings.

TITLE I.

oaths, well and truly to examine and certify, in regard to the necessity and propriety of the highway applied for.

Laws of 1826, 228; 1834, ch. 267; 7 W., 265; 23 B., 197.

Proceedings.

§ 61. They shall then personally examine the route of such highway, and shall hear any reasons that may be offered for or against laying out the same. If they shall be of opinion that such highway is necessary and proper, they shall make and subscribe a certificate in writing to that effect, which shall be delivered to the commissioners of highways of the town.

Laws of 1826, 228; 2 H., 444; see Laws of 1845, ch. 180.

Notice to occupant.

§ 62. Before the commissioners shall determine to lay out the highway, so applied for and certified, they shall cause notice in writing to be given to the occupant of the land through which the road is to run, of the time and place at which they will meet to decide on the application. The notice shall be served by delivering the same to such occupant, or if he be absent, by leaving the same at his dwelling-house; and in either case, at least three days before the time of meeting.

20 W., 187; 17 How., P. R., 75; Laws of 1826, 228.

Description of road.

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§ 63. The commissioners shall meet at the time specified in the notice, and shall hear any reasons that may be offered for or against laying out the highway. If they shall determine to lay out such highway, they shall make out and subscribe a certificate of such determination, describing the road so laid out, particularly, by routes and bounds and by its courses and distance, and shall deposit the same with the town clerk.

2 R. L. 275; 15 B., 480; 23 W., 326, 328; 4 B., 51; Laws of 1817, 31; 1826, 229; 1847, ch. 455; 1853, ch. 62.

Damages, how ascertained by agreement.**Road not to be opened, &c.**

§ 64. The damages sustained by reason of the laying out and opening such road, may be ascertained by the agreement of the owner and the commissioners of highways, provided such damages do not exceed one hundred dollars; and unless such agreement be made, or the owner of the land shall in writing release all claim to damages, the same shall be assessed in the manner prescribed by law, before such road shall be opened, or worked, or used. Every such agreement or release shall be filed in the town clerk's office, and shall for ever preclude such owner from all further claim for such damages.

19 W., 102; 4 B., 51, 64; 7 B., 297; Laws of 1847, ch. 455.

Damages, how assessed by jury.

§ 65. On the application of the commissioners of highways, or of the owner of the land through which such road is laid out, to any two justices of the peace of the town, they shall issue their warrant to some constable of some other town of the same county, neither interested, nor of kin to any person interested, in the land through which the road is laid out; directing him to summon twelve disinterested freeholders, residing in some other town than that in which such road is laid out, and not of kin to the owner of such land, to assess the damages sustained by the laying out such road; and shall

therein specify the time and place at which the jury shall meet.

5 Cow., 292; see Laws of 1847, ch. 455; 1845, ch. 180; 7 B., 304; 19 W., 103.

§ 66. Upon such freeholders appearing, the justices who issued the warrant, shall draw by lot, six of the names of the persons attending, to serve as a jury; and the first six persons drawn, who shall be free from all legal exceptions, shall be the jury to assess the said damages. Proceed-
ings.

§ 67. In all cases of the assessment of such damages, the persons by whom the assessment is to be made, shall view and examine the premises; and before making their determination, the freeholders making the same, shall be sworn well and truly to determine and assess such damages. th.

§ 68. The verdict of the jury assessing such damages, shall be received and certified by the two justices who issued the warrant for summoning them, and shall be delivered by them to the commissioners of highways of the town. th.

Laws of 1845, ch. 180, § 5, 6, 7, 8.

§ 69. Such commissioners shall cause a copy of the said verdict, with a statement of the charges and expenses, to be delivered to the supervisor of the town, who shall lay the same before the board of supervisors of the county. The board shall have power to examine into the principles on which such assessment shall have been made, and into the fairness and justice thereof, and to increase or reduce the damages, as in their judgment shall be just and reasonable. th.
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2 R. L., 275, § 16, 38, & 45; Laws of 1817, 31, § 1; 1826, 229, § 27; 7 W., 531; see Laws of 1845, ch. 180, § 5, 6, 7 & 8.

§ 70. The amount of damages, as finally settled by the board of supervisors, or as liquidated by the commissioners of highways, as provided in the sixty-fourth section of this Title, together with the charges of the commissioners of highways, justices, surveyors and other persons or officers employed in making the assessment shall be levied and collected in the town within which the highway shall be situated. The monies so collected, shall be paid to the commissioners of highways of the same town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges. Damages
and expen-
ses, how
collected.

See Laws of 1845, ch. 180, § 5, 6, 7 & 8; 12 W., 98.

§ 71. Where any person shall be the owner of any land over which any highway shall run, and such highway shall be discontinued, in whole or in part, by reason of some other road to be established and laid out under this Title, through the lands of the same person, the persons who shall assess the damages shall take into calculation the value of the road so discontinued, and the benefit resulting to such person by reason of such discontinuance, and shall deduct the same from the damages assessed for the opening and laying out such new road; and thereupon the owner of the land may enclose so much of the highway so discontinued, as shall belong to him. Damages,
in certain
cases, how
estimated.

2 R. L., 275, § 17.

TITLE I.
Disagree-
ments re-
specting
certain
roads.

§ 72. When the commissioners of highways of any town shall disagree with the commissioners of any other town in the same county, relating to the laying out of a new road, or the alteration of an old road, extending into both towns; or when the commissioners of a town in one county shall disagree with the commissioners of a town in another county, relative to laying out a new road, or altering an old road, which shall extend into both counties; the commissioners of both towns shall meet together at the request of either disagreeing commissioners, and make their determination upon such subject of disagreement.

2 R. L., 275, § 18.

Road upon
line of two
towns.

§ 73. Whenever it shall become necessary to have a highway upon the line between two towns, such highway shall be laid out by two or more of the commissioners of highways of each of said towns, either upon such line, or as near thereto as the convenience of the ground will admit; and they may so vary the same either to the one or the other side of such line, as they may think proper.

2 R. L., 275, § 19; Laws of 1821, 166; 4 H., 140.

How divi-
ded into
districts.

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§ 74. It shall be the duty of the same commissioners, when they lay out such highway, to divide it into two or more road districts, in such manner, that the labour and expense of opening, working, and keeping in repair such highway, through each of the said districts, may be equal as near as may be, and to allot an equal number of the said districts to each of the said towns.

2 R. L., 275, § 19; Laws of 1821, 166; 17 B., 481.

Effect of
allotment.

§ 75. Each district shall be considered as wholly belonging to the town to which it shall be allotted, for the purpose of opening and improving the road, and for keeping it in repair; and the commissioners shall cause such highway, and the partition and allotment thereof, to be recorded in the office of the town clerk in each of their respective towns.

Former
roads.

§ 76. All highways heretofore laid out upon the line between any two towns, shall be divided, allotted, recorded, and kept in repair, in the manner above directed.

Private
roads, how
laid out.

§ 77. Whenever application shall be made to the commissioners of highways of any town, for a private road, they shall summon twelve disinterested freeholders of the town where the land through which such road is proposed to be laid out, is situated, to meet on a day certain; of which day, notice shall be given to the owner or occupant of such land. Such freeholders, when met, shall be sworn as above provided, and shall then proceed to view the lands through which such road is applied for.

Laws of 1821, 166, § 20; 6 H., 48; 24 W., 368; 4 H., 150; see Laws of 1853, ch. 174; 1848, ch. 77.

Proceed-
ings.

§ 78. If they shall determine that such road is necessary, they shall make and subscribe a certificate in manner afore-

said, and the commissioners shall thereupon lay out the road, and cause a record thereof to be made in the town clerk's office. The damages of the owner of the land through which such road shall be laid out, shall be ascertained or assessed in like manner as if the same was a public highway, and such damages shall be paid by the person applying for the road.

5 W., 580; 7 How. P. R., 27; 10 W., 585.

§ 79. Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns; but not to be converted to any other use or purpose, than that of a road. Nor shall the occupant or owner of the land through which such road shall be laid out, be permitted to use the same as a road, unless he shall have signified his intention of so making use of the same, to the jury or commissioners, who ascertained the damages sustained by laying out such road, and before such damages were so ascertained.

For what purpose road to be used.

3 H., 607; 14 J. R., 382; 5 W., 580.

§ 80. All public roads to be laid out by the commissioners of highways of any town, shall not be less than three rods wide, and all private roads shall not be more than three rods wide.

Width of roads.

Laws of 1821, 166, § 22; Laws of 1826, 228, § 2; 5 W., 580.

§ 81. Whenever application shall be made for the discontinuance of an old road, on the ground that it has become useless and unnecessary, the commissioners of highways to whom such application shall be made, shall summon twelve disinterested freeholders of the town, to meet on a day certain, to consider such application. Such freeholders when met, shall be sworn well and truly to examine and certify in regard to the propriety of such discontinuance.

Old roads, how discontinued.

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8 B., 157.

§ 82. They shall then proceed to view such road, and if they shall be of opinion that the same is useless and unnecessary, they shall make and subscribe a certificate in writing to that effect, which shall be delivered to the commissioners of highways, who shall thereupon proceed to decide upon such application.

8 B., 157.

§ 83. All applications, certificates and other papers relating to the laying out, altering or discontinuing of any road, shall be filed by the commissioners of highways, as soon as they shall have decided thereon, in the office of the town clerk of the town.

Papers, where filed.

§ 84. Every person who shall conceive himself aggrieved by any determination of the commissioners of highways, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any road, may at any time within sixty days thereafter, appeal to any three of the judges of the court of common pleas of the county, in which

Appeals.

TITLE 1.

such road is situated. But an appeal by one person, and a decision thereon, shall not conclude nor affect the rights of any other person, who shall appeal within the limited period.

2 R. L., 282; Laws of 1817, 32; 8 N. Y., 479; 25 W., 453; 24 W., 492; 7 W., 266; 4 Pai., 522; 15 J. R., 537; 29 B., 80; 27 B., 238; 20 How. P. R., 305; 14 How. P. R., 528; 6 How. P. R., 175; see Laws of 1845, ch. 180; 1847, ch. 455.

Power and duty of judges.

§ 85. The judges to whom the first appeal from any such determination shall be made, shall have exclusive jurisdiction of all appeals from the same determination, to the end that their decision when made may embrace the whole subject; and for this purpose they shall suspend all proceedings upon the appeal first made, and upon all other appeals received by them from such determination, until the time limited for such appeals shall have expired.

7 W., 265.

Form of appeal.

§ 86. Every such appeal shall be in writing, addressed to the judges, and signed by the party appealing. It shall briefly state the ground upon which it is made, and whether it is brought to reverse entirely the determination of the commissioners, or only to reverse a part thereof; and in the latter case, it shall specify what part.

19 B., 240; 25 W., 455.

Proceedings.

§ 87. It shall be the duty of the judges to whom the appeal is made, to proceed thereon as soon as may be convenient. Where the determination appealed from was against an application for laying out, altering or discontinuing a road, the judges shall give notice to the commissioners by whom such determination was made. Where the appeal is from a determination in favor of an application for laying out, altering or discontinuing a road, the notice shall be given to the commissioners, and to one or more of the applicants for such road. In all cases, the notice shall specify the time and place, at which the judges will convene to hear the appeal.

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Notice of appeal.

§ 88. Every such notice shall be served at least eight days before the time mentioned therein, by delivering the same to one of the commissioners whose determination is appealed from, or by leaving the same at his dwelling-house. If the notice be also directed to an applicant, it shall be served in the same manner.

20 W., 187; 13 W., 434.

Proceedings.

§ 89. It shall be the duty of the judges to convene at the time and place mentioned in the notice, and to hear the proofs and allegations of the parties. They shall have power to issue process to compel the attendance of witnesses, and may adjourn from time to time, as may be necessary. Their decision, or that of any two of them, shall be conclusive in the premises, and every such decision shall be reduced to writing, be signed

by the judges making it, and be filed by them in the office of the town clerk of the town, who shall record the same.

2 R. L., 282, § 36; Laws of 1817, 32, § 2; 20 W., 187; 13 W., 484; 4 Cow., 190; 6 B., 607; 19 B., 240; 2 Cai., 179; 15 J. R., 537; 25 W., 453.

§ 90. Every such judge shall be entitled to receive two Fees. dollars, for every day employed in the hearing and decision of such appeal, to be paid by the party appealing where the determination of the commissioners shall be affirmed: but where it is reversed, to be a charge against the county.

See Laws of 1847, ch. 455; 19 B., 240; 8 N. Y., 476.

§ 91. Where an appeal shall have been made from a determination of commissioners refusing to lay out or alter a road, and the judges shall reverse such determination, such judges shall lay out or alter the road applied for; and in doing so, shall proceed in the same manner in which commissioners of highways are directed to proceed, in the like cases. Such road shall be opened by the commissioners of the town, in the same manner as if laid out by themselves. When to lay out road.

12 B., 149; 1 Cow., 23; 8 N. Y., 476; see Laws of 1845, ch. 180.

§ 92. In case the office of any one of the judges to whom such appeal shall be made, shall become vacant before the determination of such appeal, it shall be the duty of the remaining judges named therein, to associate with themselves another of the judges of the same court, who shall act with them in all subsequent proceedings, in the same manner as if he had been originally named in such appeal. Vacancies.

§ 93. No road which has been fixed by the decision of the judges on an appeal to them, shall be discontinued or altered, so long as such judges, or either of them, shall continue in commission, except by the order of the same judges, or such of them as continue in commission, joined with such other judge or judges, as shall be necessary to make three; such additional judge or judges, to be selected by the person applying for the discontinuance or alteration. How altered.

2 R. L., 282; 1 W., 373.

§ 94. If no one of the said judges shall continue in commission, such application shall be made to any three of the judges of the same court, not having any interest in the road so desired to be discontinued or altered. [590] Ib.

Laws of 1819, 155, § 1.

§ 95. No application made under either of the two last Ib. preceding sections, shall be acted upon by the judges, unless the same be accompanied by a certificate, signed by the commissioners of highways of the town in which the road is situated, stating their approbation of such application; and before the judges decide thereon, they shall proceed to view the road, so desired to be discontinued or altered. They shall be entitled to the same compensation as above provided, to be paid by the applicant.

2 R. L., 282, § 37; 3 H., 607; 2 Cow., 424.

TITLE 1.
Fences to
be removed.

§ 96. Whenever the commissioners of highways shall have laid out any public highway, through any enclosed, cultivated or improved lands, in conformity to the provisions of this Title, and their determination shall not have been appealed from, they shall give the owner or occupant of the land through which such road shall have been laid, sixty days' notice, in writing, to remove his fences. If such owner shall not remove his fences within the sixty days, the commissioners shall cause such fences to be removed, and shall direct the road to be opened and worked.

Id.

§ 97. If the determination of the commissioners shall have been appealed from, then the sixty days' notice shall be given, after the decision of the judges upon such appeal, shall have been filed in the office of the town clerk of the town.

2 R. L., 282, § 39; 3 H., 607; 6 W., 634; see Laws of 1845, ch. 180.

Certain acts
of commis-
sioners
confirmed.

§ 98. The acts and doings of the commissioners of highways of the several towns in this state, or of any two of them, in laying out, altering or discontinuing any road or highway, since the thirty-first day of December, one thousand eight hundred and five, and prior to the fourteenth day of April, one thousand eight hundred and twenty-six, are confirmed from the last mentioned day; provided such commissioners, or any two of them, shall have caused a survey of such roads or highways to be filed and recorded in the office of the town clerk of the town. But such confirmation shall not affect any decision of the judges of the court of common pleas, made prior to the fourteenth day of April, one thousand eight hundred and twenty-six, confirming or reversing the determination of the said commissioners; nor any appeal from such determination, made within six months after that day; nor any suits or proceedings which on that day were pending, at law or in equity.

Laws of 1826, 229, § 8; 7 W., 145.

When roads
cease.

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§ 99. Every public highway and private road, already laid out and dedicated to the use of the public, that shall not have been opened and worked within six years from the time of its being so laid out, and every such highway hereafter to be laid out, that shall not be opened and worked, within the like period, shall cease to be a road for any purpose whatever; but the period during which any suit, mandamus, certiorari or other proceeding, shall have been or shall be pending in regard to any such highway, shall form no part of said six years, and all highways that have ceased to be travelled or used as highways for six years, shall cease to be a highway for any purpose.

2 R. L., 277; Laws of 1861, ch. 311; 2 Cow., 426.

What roads
highways.

§ 100. All public highways now in use, heretofore laid out and allowed by any law of this state, of which a record shall have been made in the office of the clerk of the county or town; and all roads not recorded, which have been or shall

have been used as public highways, for twenty years or more; shall be deemed public highways, but may be altered in conformity to the provisions of this Title.

11 B., 457; 8 B., 157; 17 J. R., 276; 7 J. R., 107; 2 J. R., 424; Laws of 1817, 32; 2 R. L., 277.

§ 101. It shall be the duty of the commissioners of highways, to order the overseers of highways, to open all roads to the width of two rods at least, which they shall judge to have been used as public highways for twenty years.

See Laws of 1838, ch. 262; 1847, ch. 455; 1845, ch. 180; 1853, ch. 174, ch. 62; 1857, ch. 491; 1858, ch. 51; 1834, ch. 267; 1836, ch. 122; 11 B., 457.

ARTICLE FIFTH.

REGULATIONS AND PENALTIES CONCERNING THE OBSTRUCTION OF HIGHWAYS, AND ENCROACHMENTS THEREON.

SEC. 102. Forfeiture for obstructing highway.

103. Where fences encroach, commissioners to order them removed.

104. If not removed, party to forfeit fifty cents a day.

105. If encroachment denied, jury to be summoned.

106. Jury to be sworn, and to hear proofs.

107 & 108. Finding of jury, how enforced.

109. No fences to be removed but between first of April and November.

110. When trees fall into highway, occupant to remove them.

111. Persons cutting trees without consent, to forfeit one dollar, &c.

112. Penalty for leaving trees in any waters declared a highway.

113. No swinging gates allowed, except on lands liable to be overflowed.

114. Such gates to be maintained by the person benefitted.

115. If more than one, expense borne by all the occupants benefitted.

116. Overseer to file statement of charges, &c.

117. Overseers to collect such charges.

118. Commissioners to file an account of such gates.

§ 102. Whoever shall obstruct any highway, or shall fill up or place any obstruction in any ditch constructed for draining the water from any highway, shall forfeit for every such offence the sum of five dollars.

Penalty for obstructing.

2 R. L., 277; 27 B., 211; 23 W., 451; 9 J. R., 349, 365.

§ 103. In every case where a highway shall have been laid out, and the same has been or shall be encroached upon by fences, erected by any occupant of the land through or by which such highway runs, the commissioners of highways of the town, shall, if in their opinion it be deemed necessary, order such fences to be removed, so that such highway may be of the breadth originally intended. The commissioners making the order, shall cause the same to be reduced to writing, and signed. They shall also give notice in writing, to the occupant of the land, to remove such fences within sixty days. Every such order and notice shall specify the breadth of the road originally intended, the extent of the encroachment, and the place or places in which the same shall be.

Fences, when and how to be removed.

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2 R. L., 277; 27 B., 211; 6 W., 634; 2 H., 473; 14 W., 255; 3 W., 471; 2 Cow., 424; 9 J. R., 359; 7 W., 300.

TITLE I.
Penalty.

§ 104. If such removal shall not be made, within sixty days after the service of such notice, the occupant to whom the notice shall be given, shall forfeit the sum of fifty cents for every day, after the expiration of that time, for which such fences shall continue unremoved, and the commissioners of highways may remove or cause to be removed such encroachment, and the occupant of the premises shall pay to the commissioners of highways all reasonable charges therefor to be collected in the manner provided in the forty-fifth section of said title.

2 R. L., 277; Laws of 1840, ch. 300.

Proceed-
ings if en-
croach-
ment be
denied.

§ 105. If the occupant to whom notice is given, shall within five days deny such encroachment, the commissioners, or some one of them, shall apply to any justice of the peace of the county, for a precept directed to any constable of the town, to summon twelve freeholders thereof, to meet at a certain day and place, to be specified in such precept, and not less than four days after the issuing thereof, to inquire into the premises. The constable to whom such precept shall be directed shall give at least three days' notice to the commissioners of highways of the town, and to the occupant of the land, of the time and place at which such freeholders are to meet.

2 R. S., 277; Laws of 1840, ch. 300; 3 W., 468; 13 J. R., 460.

1b.

§ 106. On the day specified in the precept, the jury so summoned, shall be sworn by such justice, well and truly to inquire whether any such encroachment has been made, and by whom. Such witnesses as may be produced by either party, shall also be sworn by such justice; and the jury shall hear the proofs and allegations which may be produced and submitted.

3 W., 471.

Verdict,
how en-
forced.

§ 107. If the jury find that any encroachment has been made, they shall make and subscribe a certificate in writing, stating the particulars of such encroachment, and by whom made; which shall be filed in the office of the town clerk. The occupant of the land, whether such encroachment shall have been made by him, or by any former occupant, shall remove his fences within sixty days after the filing of such certificate, under the penalty provided in the one hundred and fourth section of this Title. He shall also pay the costs of such inquiry; and if the same shall not be paid within ten days, the justice shall issue a warrant for the collection thereof, in the manner provided in the forty-third section of this Title.

2 R. L., 277; 26 B., 592; 19 B., 537; 12 B., 510; 22 W., 135; 7 W., 300.

1b.

§ 108. If the jury find that no encroachment has been made, they shall so certify, and shall also ascertain and certify the damages which the then occupant shall have sustained by such proceeding; which, together with the costs thereof, shall

be paid by the commissioners, and shall be a charge in their favor against the town by which they shall have been elected.

§ 109. No person shall be required to remove any fence under the preceding provisions of this Article, except between the first day of April and the first day of November in any year.

When fences to be removed.

14 W., 255.

§ 110. If any tree shall fall, or be fallen by any person from any enclosed land into any highway, any person may give notice to the occupant of the land from which such tree shall have fallen, to remove the same within two days. If such tree shall not be removed within that time, but shall continue in such highway, the occupant of the land shall forfeit the sum of fifty cents for every day thereafter, until such tree shall be removed.

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Fallen trees to be removed.

2 R. L., 278, § 27.

§ 111. In case any person shall cut down any tree on land not occupied by him, so that it shall fall into any highway, river or stream, unless by the order and consent of the occupant, the person so offending shall forfeit to such occupant, the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain in such highway, river or stream.

Penalty for falling trees.

§ 112. Whoever shall cut, or cause to be cut down, any tree, so that the same shall fall into any river or stream, which now is or hereafter shall be declared a public highway, and shall not remove the same out of such river or stream, within twenty-four hours thereafter, shall forfeit five dollars for every tree so cut down and left remaining.

For not removing from streams.

§ 113. No swinging or other gates shall be allowed on any public highway, laid out by virtue of this Title, or which has heretofore been laid out, other than such public highways as run through lands liable to be overflowed by the waters of the adjacent rivers or streams, in such manner as to remove the fences thereon.

Swinging gates.

2 R. L., 278, § 30.

§ 114. Such gates shall be erected and kept in good repair, by the overseers of highways of the town, at the proper costs and charges of the occupant of the land, for whose benefit the same shall be erected.

How erected and preserved.

§ 115. If more than one gate shall be erected, and the intermediate land between the gates, at the extremities of such lands, shall be in the occupation of more than one person benefitted by such gates, the whole charge of erecting and keeping the same in repair, shall be borne by all the occupants benefitted thereby, in proportion to the extent of land each occupies adjoining the highway, between the gates at the extremities aforesaid.

Expense.

§ 116. The overseer of every road district in which such gates shall be, shall, on or before the first day of November

Proceedings to collect.

TITLE 1.

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in every year, make out and file with the town clerk, a statement of the charges incurred in the erection or repairing of such gates, with the name of the person bound to defray the same; which account shall be verified by the oath of such overseer. If more than one person is liable to defray such charges, the statement shall also contain an apportionment thereof between such persons, stating the amount to be paid by each.

Proceedings
to collect.

§ 117. The overseer shall, within ten days after filing the statement, demand of every person bound to pay such charges, or to contribute thereto, the sum due from him, according to such statement; and if any person shall refuse or neglect to pay such monies within six days after demand, it shall be the duty of the overseer to make complaint to a justice of the peace of the town, and the like proceedings shall be had for the recovery of such monies, as in the recovery of fines, for refusing or neglecting to work on the highways.

Gates to be
closed, &c.,
penalty.

§ 118. The commissioners of highways shall file an account of such gates in the town clerk's office; and if any person shall open any such gate, and shall not, immediately after having passed the same, close it, or shall wilfully or unnecessarily ride over any of the grounds, adjoining the road on which such gates shall be permitted, he shall forfeit to the party injured, treble damages.

2 R. L., 279, § 30; see Laws of 1836, ch. 281; 1854, ch. 324.

ARTICLE SIXTH.

OF THE ERECTION, REPAIRING, AND PRESERVATION OF BRIDGES.

SEC. 119. When supervisors to raise money for erecting or repairing of bridges.

120. Not more than 1,000 dollars to be raised in any one year.

121. Determination touching allowance for bridges, how revised.

122. Notice of penalty for riding, &c., faster than a walk over bridges.

123. Forfeiture of one dollar for violating notice.

124. Treble damages for injuring bridges.

When at
expense of
county.

§ 119. Whenever it shall appear to the board of supervisors of any county, that any one of the towns in such county, would be unreasonably burthened, by erecting or repairing any necessary bridge or bridges, in such town, such board of supervisors shall cause such sum of money to be raised and levied upon the county, as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part of such expenses as they may deem proper; and such monies, when collected, shall be paid to the commissioners of highways of the town, in which the same are to be expended.

2 R. L., 281, § 33; Laws of 1847, ch. 455; 12 N. Y., 57; 1 H., 53.

Limit.

§ 120. No board of supervisors shall, under the last preceding section, cause any sum exceeding one thousand dollars, to be levied and raised on any county in any one year.

Appeal.

§ 121. In case the commissioners of highways of any town, shall be dissatisfied with the determination of the board of

supervisors of their county, touching an allowance for any such bridges, such determination shall, on the application of the commissioners, be reviewed by the court of sessions of the same county, whose order in the premises shall be observed by every such board of supervisors.

§ 122. The commissioners of highways of each town, may put up and maintain in conspicuous places, at each end of any bridge in such town, maintained at the public charge, and the length of whose chord is not less than twenty-five feet, a notice with the following words in large characters, "one dollar fine for riding or driving on this bridge, faster than a walk."

[§95]
Notice of
fine, &c.

Laws of 1827, 234, § 2.

§ 123. Whoever shall ride or drive faster than on a walk, over any bridge, upon which, such notices shall have been placed, and shall then be, shall forfeit for every offence the sum of one dollar.

Penalty.

§ 124. Whoever shall injure any bridge maintained at the public charge, shall, for every offence, forfeit treble damages.

Injuries to
bridges.

See Laws of 1841, ch. 225; 1838, ch. 262; 1857, ch. 383, 639; 1858, ch. 103.

ARTICLE SEVENTH.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

Sec. 125. When two commissioners may make orders.

126. Who to have the use of trees on land over which highway is laid out.

127. By whom trees may be planted on side of highway.

128. Penalty for destroying, &c., mile-board.

129. Penalty for defacing, &c., description on guide-board.

130. Treble damages for injuring highway.

131. Penalties, when to be recovered by commissioners.

132. To what places provisions of this Title are to extend.

§ 125. Any two commissioners of highways, of any town, may make any order, in execution of the powers conferred in this Title; provided it shall appear in the order filed by them, that all the commissioners of highways of the town met and deliberated on the subject embraced in such order, or were duly notified to attend a meeting of the commissioners, for the purpose of deliberating thereon.

Two com-
missioners
may act.

Laws of 1826, 229, § 9; 30 B., 347; 27 B., 99; 15 B., 480; 22 W., 135.

§ 126. All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner or occupant of such land, except such of them as may be requisite to make or repair the highways or bridges on the same land.

Trees; to
whom they
belong.

2 R. L., 279, § 28.

§ 127. Any person owning land adjoining any highway not less than three rods wide, may plant or set out trees on the side of such highway contiguous to his land; which trees shall be set in regular rows, at a distance of at least six feet from each other. Whoever shall cut down, destroy or injure

Trees may
be planted.

Penalty for
injuring.

TITLE I.

Penalty for
injuring
mile-
boards.

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Do. as to
guide-
posts.

Injuries to
roads.

Penalties,
how reco-
vered.

Extent of
this Title.

any tree that has been or shall be so planted or set out, shall be liable in damages to the owner of such adjoining land.

§ 128. Whoever shall destroy, remove, injure or deface any mile-board or mile-stone, erected on any highway, shall forfeit for every offence, the sum of ten dollars; he shall also be deemed guilty of a misdemeanor, and on conviction, shall be fined not exceeding fifty dollars, or imprisoned not exceeding three months, at the discretion of the court.

2 R. L., 280, § 32.

§ 129. Whoever shall injure or deface any description affixed to a guide-post erected on any highway, or destroy or injure any such guide-post, shall be liable to all the penalties provided in the last preceding section.

2 R. L., 280, § 34; 14 How. P. R., 303.

§ 130. Whoever shall injure any highway, by obstructing or diverting any creek, water-course or sluice, or by drawing logs or timber on the surface of any road or bridge, or by any other act, shall, for every such offence, forfeit treble damages.

9 How. P. R., 83; 23 W., 461.

§ 131. All penalties and forfeitures given in this Title, and not otherwise specially provided for, shall be recovered by the commissioners of highways of the town, in which the offence shall be committed; and when recovered, shall be applied by them in improving the roads and bridges in such town.

17 B., 481; 5 H., 215.

§ 132. The provisions of this Title shall be construed to extend to all parts of the state, except where special provisions inconsistent therewith, have been or shall be made by law, in relation to particular counties, cities, villages or towns.

See Laws of 1835, ch. 300; 1833, ch. 97; 18 B., 22.

TITLE II.**OF THE REGULATION OF FERRIES.**

SEC. 1. Common pleas to grant licenses to keep ferries.

2. Owner of land through which highway runs, first entitled.

3. Any other person applying, to give notice.

4. Persons applying, to enter into recognizance.

5. Licenses to be entered in book of minutes of court.

6. When stream divides two counties, license obtained in either good.

7. Persons violating recognizance, guilty of misdemeanor.

8. Penalty on persons using ferries without license.

9. Offence on waters dividing counties, may be proceeded against in either.

10. This Title not to affect ferries granted by Albany or Hudson, &c.

Licenses,
by whom
granted.

§ 1. The court of common pleas in each of the counties of this state, shall grant licenses for keeping ferries in their respective counties, to as many suitable persons as they may think proper; which licenses shall continue in force, for a term to be fixed by the court, not exceeding three years.

2 R. L., 210, § 2; 14 How. P. R., 261; 11 W., 590.

TITLE 2.
To whom.

§ 2. No such license shall be granted to any person, other than the owner of the land, through which the highway adjoining to the ferry shall run, unless such owner shall neglect to apply for such license, after notice as herein after provided.

§ 3. Whenever application for a ferry shall be made by any person other than such owner, the court shall not grant a license to such applicant, unless proof shall be made, that the applicant caused notice, in writing, to be given to such owner, at least eight days before the sitting of the court, of his intention to make such application. [527]

Recogniz-
ance.

§ 4. Every person applying for such license, shall, before the same be granted, enter into a recognizance to the people of this state, in open court, in the sum of one hundred dollars, faithfully to keep and attend such ferry, with such and so many sufficient and safe boats, and so many men to work the same, as shall be deemed necessary, together with sufficient implements for said ferry, during the several hours in each day, and at such several rates as the court granting the license, shall, from time to time, order and direct; which recognizance shall be forthwith filed with the clerk of the county.

2 R. L., 210, § 2.

§ 5. Every license so granted, shall be entered in the book of minutes of the court by the clerk; and a copy thereof, attested by him, shall be delivered to the person licensed. To be en-
tered.

2 R. L., 210, § 3.

§ 6. Whenever the waters over which any ferry may be used, shall divide two counties, a license obtained in either of the said counties, shall be sufficient to authorise the person obtaining the same, to transport persons, goods, wares and merchandize, to and from either side of said waters. Effect of
certain
licenses.

§ 7. Every person who shall violate the condition of such recognizance, shall be considered guilty of a misdemeanor; and on conviction, shall be subject to such fine as the court may adjudge, not exceeding twenty-five dollars for each offence; and on proof of such conviction, the court of common pleas shall direct the recognizance entered into by such person, to be estreated for the use of the people of this state. Penalty for
misconduct.

§ 8. If any person (except within the counties of Essex and Clinton, the counties of Orange, Rockland and Westchester, and the counties in the first senate district,) shall use any ferry for transporting across any river, stream, or lake, any person or any goods, chattels or effects, for profit or hire, unless authorised in the manner directed in this Title, such person shall be considered guilty of a misdemeanor; and on conviction, shall be subject to such fine, for the use of the county, as the court may adjudge, not exceeding twenty-five dollars for each offence. Penalty for
ferrying
without
license.

2 R. L., 210, § 1 & 2; 5 J. R., 175; 11 W., 590.

§ 9. Where any such offence shall be committed on waters Proceed-
ings.

TITLE 1.

dividing two counties, the person so offending may be proceeded against in each of said counties; but the fine to be imposed, shall not exceed twelve dollars and fifty cents in each case.

Limitation
of this Ti-
tle.

§ 10. Nothing in this Title contained, shall affect or alter the ferries granted by charter to the corporations of Albany and Hudson, or alter or impair any grants made by this state, or any legal right or privilege whatever, belonging to any individual or corporation; by virtue of any law of this state, or otherwise.

2 R. L., 210, § 2 & 5; see Laws of 1845, ch. 352; 3 R. Ch., 315; 1849, ch. 80.

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CHAP. XVII.**Of the Regulation of Trade in certain cases.**

(Took effect May 1, 1838.)

TITLE 1. — Of sales by auctioneers.

TITLE 2. — Of the inspection of provisions, produce and merchandize.

TITLE 3. — Of the tare of butter firkins, and the packing and sale of pressed hay.

TITLE 4. — Of hawkers and pedlers.

TITLE I.***OF SALES BY AUCTIONEERS.**

SEC. 1. Duties upon goods sold at auction.

2^a. Goods exempt from duty.

2^b. Goods how to be struck off. Duties if purchased by auctioneer or owner.

3. Goods sold at private sale, subject to duties.

4. Articles exempt from duties.

5. When goods shall be exempt.

6. By whom sales to be made.

7. Penalty for violating preceding section.

8. When auctioneers may employ a partner or clerk.

9. Goods damaged at sea, under whose direction sold.

10. Inspectors of damaged goods to be appointed.

11. Auctioneers to give bonds.

12. Bonds by whom to be approved.

13. Approbation to be endorsed, and bond to be delivered to comptroller.

14. Officers taking bond, to give notice to comptroller.

15. Penalty for selling without bond.

16. Penalty for accepting appointment from another state, &c.

17. No auctioneer to have more than one auction house or store.

18. Not to sell at any place different from that designated.

19. Penalty for violating two last sections.

20. Common council of cities may designate places for sale of horses, &c.

21. Auctioneers to give notice of sales not made at their auction store.

22. Penalty for violating last section.

23. Auctioneer to receive 2½ per cent. commission, unless an agreement for more.

24. Penalty for violating last section.

25. When goods liable to duties are not to be sold at private sale.

* See act amendatory. Laws of 1846, ch. 98.

SEC. 26. When auctioneer to make a memorandum of sale.

27. Auctioneers to account quarterly.
28. Account to be exhibited to mayor or recorder, or to county judge.
29. Oath of auctioneer rendering account.
30. Partner of auctioneer to make oath of truth of account.
31. In account, partner or clerk to state sales made by him, &c.
32. Auctioneer to pay duties in ten days after rendering account.
33. To whom payments to be made.
34. Receipts to be sent to comptroller.
35. Auctioneer selling no goods liable to duties, to make affidavit thereof.
36. Penalty for neglect of duties prescribed in last nine sections.
37. Comptroller to publish every such neglect; appointment forfeited.
38. Certain goods in New-York to be sold between sunrise and sundown.
39. Penalty upon auctioneer guilty of fraud in execution of his duties.
- 40 & 41. Forfeitures imposed by this Title, how to be collected and applied.

§ 1. All goods, wares and merchandize, and every other species of personal property, which shall at any time be exposed to sale by public auction within this state, with the exceptions mentioned in the second section of this act and in the fifth section of title one, Chapter seventeen, Part one of the Revised Statutes shall be subject, each and every time they shall be struck off to duties at the following rates, namely:

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Goods sub-
ject to
duty.

1. All wines and ardent spirits, foreign or domestic, at the rate of one dollar on every hundred dollars:

2. All goods, wares, merchandize and effects imported from any place beyond the Cape of Good Hope at the rate of fifty cents on every one hundred dollars:

3. All other goods, wares, merchandize and effects which are the production of any foreign country at the rate of seventy-five cents on every hundred dollars:

4. The duties shall be calculated on the sums for which the goods so exposed to sale shall be respectively struck off, and shall in all cases be paid by the person making the sale.

Laws of 1846, ch. 62, § 1.

§ 2^a. No auction duties shall be payable upon the following goods and articles:

Goods ex-
empt from
duty.

1. Ships and vessels.

2. Utensils of husbandry, horses, neat cattle, hogs and sheep.

3. Articles of the growth, produce and manufacture of the United States, except distilled spirits.

Laws of 1846, ch. 62, § 2.

§ 2^b. Goods sold by auction, shall in all cases be struck off to the highest bidder; and where the auctioneer or owner, or any person employed by them or either of them, shall be such bidder, they shall be subject to the same duties as if struck off to any other person; but this section shall not be construed to render valid any sale, that would otherwise be deemed fraudulent and void.

How to be
struck off.

Laws of 1817, 326, § 1.

TITLE 1.
Goods sold
at private
sale, subject
to duties.

§ 3. All articles, except those mentioned in the fourth and fifth sections of this Title which shall be sold on commission by an auctioneer, by a co-partner or clerk of an auctioneer, or by a person in any way connected in the auction business, or in auction sales with an auctioneer, whether at auction or private sale, shall be liable to the duties before enumerated.

Laws of 1817, 326, § 1; 1835, ch. 62.

Sect. 4 repealed by Laws of 1846, ch. 62.

Sales ex-
empt.

§ 5. Goods and chattels otherwise liable to the auction duties, shall be exempt therefrom, if they shall be sold under the following circumstances:

1. If they shall belong to the United States, or to this state:

2. If they shall be sold under any judgment or decree of any court of law or equity; or under a seizure by any public officer, for or on account of any forfeiture or penalty; or under a distress for rent:

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3. If they shall belong to the estate of a deceased person, and be sold by his executors or administrators, or by any other person duly authorised by a surrogate:

4. If they shall be the effects of a bankrupt or insolvent, and be sold by his assignees appointed pursuant to law, or by a general assignment for the benefit of all the creditors of such bankrupt or insolvent:

5. If they shall be goods damaged at sea, and be sold within twenty days after they shall have been landed, for the benefit of the owners or insurers.

Laws of 1817, 329, § 8.

Sales, by
whom
made.

§ 6. All sales at public auction in the city of New-York, not under the authority of the United States, and all such sales in other parts of the state where duties are payable on the effects to be sold, shall be made by an auctioneer who shall have given the security herein after required, or by a copartner or clerk of an auctioneer duly authorised under the provisions of this Title; but where no duties are payable, all such sales, except in the city of New-York, may be made by any citizen of this state.

Laws of 1824, 37, § 2; see Laws of 1838, ch. 52.

Penalty.

§ 7. Every person who shall sell, or attempt to sell, at public auction, any goods or effects, contrary to the provisions of the last preceding section, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried: the fine in no case to exceed five hundred dollars; the imprisonment, three months.

Laws of 1824, 38, § 2; see Laws of 1838, ch. 52.

Copartner
or clerk.

§ 8. Every auctioneer, in case of his inability to attend an auction, by sickness, by his duty as a fireman, by reason of military orders, or by his necessary attendance in a court of justice, or in case of his temporary absence from the city or place for which he is appointed, may employ a copartner or clerk to hold such auction in his name and behalf, such

TITLE I.

copartner or clerk having previously taken an oath to be filed with the clerk of the county in which such auctioneer shall reside, fully and faithfully to perform the duties incumbent on him by the provisions of this Title, and which oath shall also contain a true statement of the connexion that exists between him and the auctioneer.

Laws of 1817, 331, § 11; 1835, ch. 62.

§ 9. Goods damaged at sea, and sold for the benefit of the owners or insurers, shall be sold, in the city of New-York, under the direction of the wardens of the port, and in other cities and counties of the state, under the direction of persons appointed to inspect damaged goods in the city or county where the sale is made.

Goods damaged at sea.

Laws of 1817, 329, § 8.

§ 10. One or more, not exceeding three, inspectors of damaged goods, whenever their appointment shall be necessary, shall be appointed in the cities of Albany, Troy and Hudson, by the mayor or recorder of those cities respectively; and in every other county of the state, by any judge of the county courts, to whom application for that purpose shall be made.

Inspectors of such goods.

§ 11. No person appointed to the office of an auctioneer, shall execute the duties of such office, until he shall have entered into a bond to the people of this state, with two sufficient freeholders as his sureties, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office, and for the payment of the duties that are, or shall be, imposed by law, and that shall accrue on sales made by him or under his direction, by virtue of his office.

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Bond.

Laws of 1817, 327, § 4; see Laws of 1838, ch. 52; 1846, ch. 62.

§ 12. Such bond, if executed by an auctioneer appointed in a city, shall be taken and approved of by the mayor or recorder of such city; and if executed by an auctioneer appointed for a county, by any judge of the county courts of such county.

How approved.

§ 13. The officer taking the bond, shall endorse upon it a certificate of his approbation, and of the day on which it was taken, and shall deliver the bond thus endorsed, to the auctioneer by whom it shall have been executed, who within ten days thereafter shall deliver, or cause the same to be delivered, to the comptroller.

How disposed of.

§ 14. Every officer taking such bond, shall, without delay, transmit a notice to the comptroller, stating the name of the auctioneer and his sureties entering into the bond, and the day on which the same was executed and approved.

Do.

§ 15. Every auctioneer who shall sell any goods, wares, merchandize or effects, by public auction, without having given the security above required, shall forfeit the sum of one hundred and twenty-five dollars for each article so exposed by him to sale.

Penalty for acting without bond.

See Laws of 1838, ch. 52.

TITLE 1.
Further
penalty.

§ 16. Every auctioneer, who, during his term of office, shall accept an appointment as auctioneer from any other state, or who shall be concerned as principal or partner in selling any goods, wares, merchandize, or effects, in any other state by public auction, or who shall receive any reward, compensation or benefit, for or on account of any such sale, shall be deemed guilty of a misdemeanor, and on conviction shall forfeit his appointment, and be incapable forever thereafter of acting as an auctioneer within this state.

Laws of 1817, 327, § 16.

Auction-
eers to have
but one auc-
tion house.

§ 17. No auctioneer in any city of this state, shall at the same time have more than one house or store, for the purpose of holding his auctions; and every such auctioneer before he shall enter on the execution of his office, shall designate, in a writing signed by him, such house or store, and shall also name therein the partner or partners, if any, engaged with him in business, and shall file such writing with the clerk of the city, for which he shall be appointed.

Laws of 1817, 327, § 9.

And not to
sell else-
where.

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Exceptions.

§ 18. No such auctioneer shall expose to sale by public auction, any goods or articles liable to auction duties, at any other place than that designated in the writing so deposited by him, except goods sold in original packages as imported, household furniture, and such bulky articles as have usually been sold in warehouses, or in the public streets, or on the wharves.

Penalty.

§ 19. Every such auctioneer, who shall violate any provision of the two last sections, shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding two hundred and fifty dollars for each offence.

Place for
sale of
horses, &c.

§ 20. The common council of each city in this state, may designate such place or places, within such city, for the sale by auction of horses, carriages, and household furniture, as they shall deem expedient.

Notice of
certain
sales.

§ 21. Every auctioneer in the city of New York shall, under his own proper name, give previous notice in one or more of the public newspapers printed in the said city, of every auction sale that shall be lawfully made by him; and in case he shall be connected with any person or firm, his name shall in all cases precede separately and individually the name of such person or the title of the firm under which he transacts business.

Laws of 1817, 330; 1835, ch. 62.

Penalty.

§ 22. Every auctioneer, copartner or clerk of an auctioneer and every other person whomsoever in the city of New York, who shall advertise a sale by auction in any other manner than the one prescribed in the foregoing sections, or shall be concerned in any sale by auction, not advertised in the afore-said manner, shall on conviction thereof forfeit the sum of five hundred dollars for each offence, and be also subject to

imprisonment at the discretion of the court in which he shall be tried; but such imprisonment shall not exceed six months.

Laws of 1817, 330; 183, ch. 62.

§ 23. No auctioneer shall demand or receive a higher compensation for his services, than a commission of two and one half per cent. on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing, between him and the owner or consignee of the goods or effects sold. Commis-
sion.

Laws of 1817, 330, § 14.

§ 24. Every auctioneer who shall violate the provisions of the last section, shall forfeit the sum of two hundred and fifty dollars, to every person from whom he shall demand or receive an unlawful compensation or commission, and shall also be liable to refund the monies so illegally received. Penalty.

§ 25. No auctioneer, on the day and at the place where his public auction shall be held, nor any person whatever, on the same day and at the same place, shall sell at private sale any goods or effects liable to auction duties; and every person who shall violate this provision, shall forfeit a sum equal to the price for which such goods shall have been sold. Private
sales, when
and where
prohibited.

Laws of 1817, 330, § 11; 3 S. S. C., 52; 7 N. Y., 224.

§ 26. When goods shall be struck off at auction, and the bargain shall not be immediately executed by the payment of the price, or the delivery of the goods, it shall be the duty of the auctioneer, to enter, in a sale-book to be kept by him for that purpose, a memorandum of the sale, specifying the nature, quantity and price of the goods, the terms of sale, and the names of the purchasers, and on whose account the sale is made. Entry in
sale-book.

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§ 27. Every auctioneer who shall have entered into the bond required by law, shall make out in writing a quarterly account, dated on the first days of April, July, October and January, in the year for which he is appointed, and shall therein state minutely and particularly, Quarterly
account.

1. The sums for which any goods or effects shall have been sold at every auction held by him, or in his behalf, from the time of his entering into such bond, or the date of his last quarterly account:

2. The days on which sales were so made, and the amount of each day's sale, designating the sales made by himself or in his presence, and those made in his absence by a partner or clerk acting in his behalf, and specifying the causes of such absence:

3. The amount of all private sales made by himself or any of his partners, on commission, and the days on which such sales were made:

4. The amount of the duties chargeable under the provisions of this Title, on all the sales, public and private, mentioned in the account.

Laws of 1817, 328, § 5 & 6; see Laws of 1846, ch. 62.

TITLE I.
To whom
exhibited.

§ 28. Every such account, within twenty days after the day on which it is dated, shall be exhibited, if made out, by an auctioneer appointed in a city, to the mayor or recorder of such city, and if by an auctioneer appointed for a county, to any judge of the county courts of such county.

Oath.

§ 29. Every auctioneer exhibiting an account, shall take the following oath, before the officer to whom the account shall be exhibited: "I ——— do solemnly and sincerely swear, (or affirm) that the account now exhibited by me, and to which I have subscribed my name, contains a just and true account of all the goods, wares, merchandize and effects, sold or struck off, or bought in by me, at public sale, or sold by me at private sale on commission, whether subject to duty or not, or sold, struck off, or bought in as aforesaid, by others in my name, or under my direction, or for my benefit, within the time mentioned in the within account; and of the days upon which the same were respectively sold; and that I have attended, personally, such of the said public sales as are not stated in the said account to have been made without my attendance; and that the causes therein mentioned, of my absence from such sales as I did not attend, are truly stated: that I have examined the entries of all the sales mentioned in said account in the book kept by me for that purpose, and fully believe this account to be in all respects correct; and further, that I have, during the time therein mentioned, conformed, in all things, to the true intent and meaning of the laws regulating sales by auctioneers, according to the best of my knowledge, information and belief." Such oath shall be reduced to writing, be endorsed on the account, and be subscribed by the auctioneer taking it.

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Partner
also to
make oath.

§ 30. Every partner of such auctioneer shall also make and subscribe an oath, to be endorsed on the account, as shall also every clerk or other person whatever, in any way connected in business with such auctioneer, who shall have made any sale contained in said account, that he believes the account so rendered to be just and true in every particular.

Laws of 1817, 328; 1835, ch. 62.

Duty of
partner or
clerk as to
account.

§ 31. Every partner or clerk, who shall have made any sale on behalf of an auctioneer, shall, in the account rendered by such auctioneer, set his name, or the initials thereof, opposite to each sale made by him, mentioned in such account; and shall make and subscribe an affidavit to be annexed to such account, stating that the sales so noted are all the sales liable to auction duties, public or private, made by him within the time mentioned in the account, and that the account of such sales, so therein stated, is just and true; that such sales were made by him, in the absence of such auctioneer, who was unable to attend from the causes specified in his account; and that in all acts performed by him, in behalf of such auctioneer, during the time aforesaid, he had endeavored to conform

to the true intent and meaning of the laws regulating sales by auctioneers.

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Laws of 1817, 328, § 11.

§ 32. Every auctioneer, within ten days after he shall have exhibited his account, shall pay for the use of this state, the duties accrued on the sales mentioned in the account, and immediately after such payment, shall deliver or transmit such account, with the affidavits endorsed thereon, and annexed thereto, to the comptroller, to be filed in his office.

Duties,
when to be
paid.

Laws of 1817, 328, § 5, 6, & 19; 1843, ch. 86.

§ 33. Every such payment, if made by an auctioneer appointed for any other place than the city of New-York, shall be made to the treasurer of this state, and by every auctioneer in the city of New-York, shall be made to such bank in the city of New York as shall be designated by the comptroller, as entitled to the state deposits according to law; and the receipt of the proper officer of the bank shall be taken therefor.

Payments,
where to be
made.

§ 34. The auctioneer taking such receipt shall immediately transmit the same to the comptroller, who shall thereupon certify such payment to the treasurer, and charge him with the amount thereof.

Receipt to
be sent to
comptrol-
ler.

§ 35. Every auctioneer, who within the period limited for his accounting, shall have made no sales, public or private, of goods or effects liable to auction duties, shall make and subscribe an affidavit of those facts, before any officer to whom his account, had such sales been made by him, might have been exhibited, and shall transmit a copy of such affidavit, certified by the officer taking it, to the comptroller, within the same time that an account is required to be rendered.

Affidavit if
no sales be
made.

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Laws of 1817, 328, § 5, 6, & 19.

§ 36. Every auctioneer, partner or clerk of an auctioneer, and every person whatever in any way connected in business with an auctioneer, who shall refuse or neglect to perform any act or duty, which in either of the last nine sections he is required to perform, shall, for each offence, forfeit to the people of this state, the sum of seven hundred and fifty dollars.

Penalty for
neglect of
duty.

Laws of 1817, 328, § 9; Laws of 1835, ch. 62.

§ 37. It shall be the duty of the comptroller to certify and publish in the state paper, every such refusal or neglect of an auctioneer; and from the time of such publication, the delinquent auctioneer therein named, shall be deemed to have forfeited his appointment, and shall be incapable of doing any act by virtue thereof.

Publi-
cation of neg-
lect.

§ 38. All sales of goods, by public auction, in the city of New-York, by an auctioneer, shall be made in the day time, between sun-rise and sun-set, excepting,

Sales in
New York.

1. Books, or prints:

2. Goods sold in the original package, as imported, according to a printed catalogue, of which samples shall have been

TITLE 1.

opened and exposed to public inspection, at least one day previous to the sale.

Penalty. Every auctioneer who shall violate the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction, shall forfeit his appointment.

Laws of 1817, 328, § 10.

Id. § 39. Every person who shall be guilty of any fraud or deceit, in the execution of this Title, or who shall, by any fraudulent means, seek to elude or defeat its operation, shall be deemed guilty of a misdemeanor, and shall forfeit treble damages to the party injured.

7 N. Y., 225.

Forfeitures, how prosecuted for. § 40. All forfeitures, imposed in this Title, and not otherwise specially appropriated, shall be prosecuted for, by the district attorney of the county in which the offence shall be committed, in the name of the people; and it shall be the duty of the comptroller to give immediate notice to the proper district attorney, of every such forfeiture believed to have been incurred. The monies recovered, deducting a proper compensation to the district attorney, to be settled by the comptroller, shall be paid to the treasurer of the county in which the offence shall be committed, for the use of the poor of such county.

Duty of attorney-general. § 41. The comptroller is authorized, whenever he shall deem it necessary, to give notice to the attorney general of any forfeiture incurred by an auctioneer, or any other person under this Title; and the attorney general, when thus notified, shall have power to prosecute for such forfeiture in the manner provided by section forty of this Title, and after paying his costs, the monies recovered shall be appropriated in the manner specified in said Title.

Laws of 1835, ch. 62; see Laws of 1831, ch. 316; 1833, ch. 212; 1837, ch. 297; 1847, ch. 242; 1853, ch. 138; 1849, ch. 399.

TITLE II.***OF THE INSPECTION OF PROVISIONS, PRODUCE, AND MERCHANTIZE.**

- [536]** **ART. 1.** — Of the inspection of flour and meal.
ART. 2. — Of the inspection of beef and pork.
ART. 3. — Of the inspection of pot and pearl ashes.
ART. 4. — Of the inspection of fish.
ART. 5. — Of the inspection of fish or liver oil.
ART. 6. — Of the inspection of lumber.
ART. 7. — Of the inspection and culling of staves and heading.
ART. 8. — Of the inspection of flax-seed.
ART. 9. — Of the inspection of sole leather.
ART. 10. — Of the inspection of hops.
ART. 11. — Of the inspection of distilled spirits.

* See Laws of 1843, ch. 302.

ART. 12. — Of the inspection of leaf tobacco, in the city of New-York.

ART. 13. — General provisions.

ART. 1.

ARTICLE FIRST.

OF THE INSPECTION OF FLOUR AND MEAL.

- SEC. 1. Flour and meal not to be exported, unless inspected.
 2. When and where to be inspected, and re-inspected.
 3. Flour and meal manufactured for exportation, to be packed in casks.
 4. Dimensions of casks.
 5, 6, 7 & 8. Casks how marked and branded.
 9. When packed and branded, inspector to inspect same.
 10. His duty in so doing.
 11. No cask containing Indian meal to be branded, unless made of kiln-dried corn.
 12. Inspector to deliver to owner, flour and meal taken from cask.
 13. Flour and meal not made in this state, to be inspected before sale in New-York.
 14. Penalty for shipping without being inspected.
 15. Vessels suspected, to be searched.
 16. Inspector may seize and sell all flour or meal so shipped.
 17. Penalty for offering casks on which tare is undermarked.
 18. Penalty for undermarking tare.
 19. Penalty for exporting casks marked "light."
 20. Penalty for neglecting to have flour or meal inspected.
 21. Penalty for altering brand marks.
 22. Penalty for offering for sale mixed flour, as good.
 23. Penalty for transporting Indian meal, upon deck of vessel.
 24. No inspector to purchase or sell, except for his own use.
 25. Not to be connected with any manufacturer or merchant.
 26. Inspector in New-York, when to give certificate of quality, &c.
 27. Certificate, how verified; presumptive evidence.
 28. Inspectors in New-York, Albany, and Troy, may appoint assistants, &c.
 29. Inspector in New-York may execute his duties in adjoining counties.
 30. (Repealed.)

§ 1. No wheat flour, rye flour, Indian meal, or buckwheat meal shall be shipped for exportation from this state, excepting to be carried down the Susquehanna, or on the lakes, or the river St. Lawrence, unless it shall have been inspected, approved and branded, according to the provisions of this Article. But this prohibition shall not extend to any flour or meal, which shall be brought from any other state, through one of the canals, and which shall have been inspected and branded, according to the laws of such state.

Flour and meal, when to be inspected.

This Article was compiled, with some variations and additions, from the following statutes: 2 R. L., 320; Laws of 1822, 117; 1827, 323; but see Laws of 1843, ch. 202; 13 J. R., 330; 1 Cal., 207; 1 J. R., 206.

§ 2. All flour or meal purchased for exportation, shall be inspected at the place of exportation; and if shipped between the first day of May and the first day of October, shall be re-inspected at the time it shall be shipped, unless it shall have been inspected within thirty days previous to such shipment.

§ 3. All wheat flour, rye flour, Indian meal, or buckwheat meal, manufactured for exportation in this state, shall be packed in good and strong casks, made of seasoned oak, or

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How packed.

TITLE 2.

Size of
casks.

other sufficient timber, and hooped with at least ten hoops, three of which shall be on each chime, and properly nailed.

§ 4. The casks shall be of two sizes only; one size shall contain one hundred and ninety-six pounds of flour or meal, with staves of twenty-seven inches long, and each head sixteen and one half inches in diameter; the other size shall contain ninety-eight pounds, with staves twenty-two inches long, and each head fourteen inches in diameter, or with staves twenty-seven inches long, and each head not more than twelve inches in diameter, but Indian meal may likewise be packed in hogsheads, which shall contain eight hundred pounds.

Ib., how
marked and
branded.

§ 5. The casks shall be made as nearly straight as may be, and their tare shall be marked on one head with a marking iron; they shall likewise be branded with the weight of the flour and meal contained therein, and with the initials of the christian name and the surname of the manufacturers thereof, at full length, except hogsheads of Indian meal, on which the weight only shall be branded.

See Laws of 1833, ch. 261.

Ib.

§ 6. Every such cask of wheat flour, shall be branded as follows: if of a very superior quality, "Extra Superfine;" if of a quality now branded "Superfine," with the word "Superfine;" if of a third quality, "Fine;" if of a fourth quality, "Fine Middlings;" if of a fifth quality, "Middlings;" if of a sixth quality, "Ship Stuffs."

Ib.

§ 7. Each cask of rye flour intended for the first quality, shall be branded with the words "Superfine Rye Flour;" and each cask intended for the second quality, with the words "Fine Rye Flour."

Ib.

§ 8. Each cask of Indian meal shall be branded with the words "Indian Meal;" and each cask of buckwheat meal, with the letter and word "B. Meal."

Inspector to
inspect.

§ 9. When the flour and meal has been packed, and the casks branded, according to the preceding provisions, application may be made to an inspector of flour and meal, and it shall be his duty to examine and determine the quality of the flour and meal.

His duty.

§ 10. It shall be the duty of the inspector,

1. To ascertain by examination the weight of all the casks which he may suspect of being falsely tared:

2. To alter and correct the brands, in all cases where he shall be of opinion, that they do not designate the real quality of the flour or meal:

3. To weigh such casks as he shall suspect not to contain the full weight, and if they do not contain the full weight, to brand them with the word "Light:"

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4. To brand all casks containing flour or meal so damaged as not to be fit for exportation, with the word "Bad:"

And lastly, on all casks made, branded and packed, accord-

ing to the provisions of this Article, to brand in a legible manner on the quarter, the initials of his christian name and his surname, at full length, together with the name of the county where the inspection has been made.

§ 11. No inspector shall brand any cask containing Indian meal, unless the same shall have been made of corn, properly kiln dried, and shall be ground fine and bolted.

Indian meal.

§ 12. The inspector, if required, shall deliver to the owner, or his agent, all flour or meal taken from a cask, with the augur or instrument that he shall use for the purpose of inspection, under the penalty of twenty-five dollars, to be recovered by the owner, in addition to his actual damages and costs of suit.

Flour or meal taken from casks in inspecting.

§ 13. All flour or meal not manufactured within this state, which shall be offered for sale in the city of New York, in casks, except damaged flour sold as such at auction, shall be inspected previous to its being so offered, in the same manner as flour intended for exportation, and be subject to all the provisions and penalties of this Article.

Flour sold in New York, when to be inspected.

§ 14. Every person who shall ship, or attempt to ship, for exportation from this state, any flour or meal not inspected and branded according to the provisions of this Article, shall forfeit the same; and every person who shall have exported from this state any such flour or meal, shall forfeit the sum of five dollars for every cask so exported.

Penalty for shipping flour or meal not inspected.

§ 15. Every inspector shall have power to enter on board of any vessel between sunrise and sunset, to search for flour or meal that he may suspect to have been shipped contrary to the provisions of this Article; and every person who shall obstruct any inspector in the execution of this duty, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

Power and duties of inspector.

§ 16. It shall be the duty of every inspector, to seize and take into his possession all flour and meal that he shall discover to have been shipped, or attempted to be shipped, contrary to the provisions of this Article. He shall sell the same at public auction, giving at least five days' public notice, in some newspaper printed in the county or place for which he is appointed, of the time and place of such sale; and shall pay the proceeds, deducting ten per cent for his trouble and expenses, to the superintendents, or other persons having the charge of the poor, in the county or place where the seizure shall be made.

Id.

§ 17. Every person knowingly offering for sale any cask of flour or meal, upon which the tare shall be undermarked, or in which there shall be a less quantity of meal than is branded thereon, shall forfeit five dollars for every cask so undermarked, or deficient, one half to the use of the person who shall be injured and shall prosecute for the same, with such other damages as he shall sustain, and the other half to

Penalty for selling when tare is undermarked.

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TITLE 2.

the use of the poor of the city or town where the recovery shall be had.

For under-
marking
tare, &c.

§ 18. Every manufacturer of flour or meal, who shall undermark the tare of any cask, or shall put therein a less quantity of meal than is branded thereon, shall forfeit the sum of five dollars for every cask so undermarked, or deficient, one half to the use of the person who shall be injured, and shall prosecute for the same, with such other damages as he shall sustain, and the other half to the use of the poor of the city or town where the conviction shall be had; but such penalty shall not be recovered, when the light weight shall appear to have been occasioned by some accident unknown to such manufacturer, and which happened after the packing of the cask.

For export-
ing light
casks.

§ 19. Every person who shall export from this state any flour or meal in casks, which shall have been marked "light" by an inspector, shall forfeit the sum of five dollars for every cask so branded and exported.

For neglect
to have
flour or
meal in-
spected.

§ 20. Every purchaser of flour or meal for exportation, who shall neglect to have the same duly inspected and branded at the place of exportation, according to the provisions of this Article, shall forfeit the sum of five dollars for every cask so purchased and not inspected, although such cask may have been inspected and branded previous to such purchase.

For coun-
terfeiting
marks.

§ 21. Every person who shall alter or counterfeit any brand marks, whether state or private, made under the provisions of this Article, shall forfeit the sum of one hundred dollars for every cask, the brand of which shall be so altered or counterfeited; and every person who shall put any flour or meal in an empty cask, branded by an inspector, and offer the same for sale in such cask, without first cutting out the brands, shall, for each cask, forfeit the sum of five dollars.

For selling
mixed flour.

§ 22. Every person who shall knowingly offer for sale as good wheat flour, any flour which shall be found to contain a mixture of Indian meal, or any other mixture, or any unsound flour, shall forfeit for every cask the sum of five dollars; and for the payment of this penalty, the flour shall be liable, and may be seized and sold by the inspector.

For trans-
porting
Indian meal
on deck.

§ 23. Every person having charge of any vessel, who shall transport into the city of New-York any Indian meal upon the deck of the vessel, shall forfeit twenty cents for every barrel, and eighty cents for every hogshead of such meal.

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Inspector
not to deal
in flour or
meal.

§ 24. No inspector of flour or meal shall purchase or sell any flour or meal, except for his private use, or be directly or indirectly concerned in any such purchase, under the penalty of five hundred dollars for each offence.

Ib.

§ 25. No such inspector shall be in any manner connected in business or trade, with any flour manufacturer or flour merchant, or act as agent for any such manufacturer or merchant, or any other person, in the purchase or sale of flour or meal; and every inspector who shall violate this provision,

shall forfeit his office, and shall be forever thereafter incapable of acting as an inspector, under any of the inspection laws of this state.

§ 26. It shall be the duty of the inspector of flour in the city and county of New-York, whenever required, to certify under his hand, the quality of any flour inspected by him, and the state and condition thereof, and of the barrels containing the same, specifying, as particularly as may be, the extent of any damage, appearing on such inspection; the apparent cause thereof, whether by exposure or injury in transportation, or in consequence of the original putting up of such flour; and also specifying the brands or other marks upon the casks inspected, and the name of the consignees thereof. For every such certificate, the inspector shall be entitled to receive ten cents for every folio of one hundred words contained therein.

Inspector
to give cer-
tificate.

§ 27. Every such certificate shall be presented to the clerk of the city and county of New-York, and if he shall be satisfied that it is genuine, and that the person signing the same is inspector of flour and meal for that city, he shall endorse thereon his own certificate to that effect, under his hand and seal of office; and every certificate of an inspector thus verified, shall be presumptive evidence, in all courts, of the facts therein contained.

Certificate,
how
endorsed.

§ 28. The inspector of flour and meal in the city of New-York, and such inspector in each of the cities of Albany and Troy, may appoint as many assistants to assist him in the execution of the duties of his office, as he may deem necessary, who shall hold their office during his pleasure; and for whose acts, all of which shall be performed in his name, he shall be responsible.

Assistants.

§ 29. Such inspector for the city and county of New-York, may execute the duties of his office, in any county immediately adjoining. He shall appoint a deputy in the county of Kings, to inspect all flour and meal manufactured for inspection in that county; which, when so inspected, may be exported from that county, and from any other part of the state, in the same manner as if inspected in the city of New-York.

Powers of
inspector in
New York.

Sec. 30 repealed by Laws of 1832, ch. 300.
See Laws of 1836, ch. 266.

ARTICLE SECOND.

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OF THE INSPECTION OF BEEF AND PORK.

- Sec. 31. Beef and pork not to be exported without inspection.
 32. Exceptions from the preceding section.
 33. Penalty for violating two last sections.
 34. Inspectors of beef and pork to give bond.
 35. To provide store or yard, when storage allowed.
 36. Barrels for re-packing beef and pork, how to be made.
 37. Dimensions of barrels.
 38. What staves and heads to be made of.

TITLE 1.

- SEC. 39. Hoops to be well set, &c.; barrels how to be branded; size of half-barrels.
40. In what barrels beef and pork re-packed may be packed.
41. Inspectors to brand none but well fattened and properly packed beef and pork.
42. Different qualities of pork.
43. How much salt and pickle to be put into each barrel.
44. No thin or bad pork to be branded.
45. What beef may be re-packed.
46. Different qualities of beef.
47. How much salt, &c. to be put into each barrel.
48. Bloody and neck pieces of beef, how to be prepared.
49. Beef and pork re-packed, how pickled; duty if casks are too large.
50. Weight, &c. of every barrel to be branded on its head.
51. How beef killed according to customs of Jews, to be packed, &c.
52. Provisions of two sections of Article 1st, to apply to New-York.
53. Fees of inspectors.
54. Penalty for being concerned in purchasing cattle or hogs for sale.
55. Penalty for inspecting, &c. out of his own county.
56. The store and yard of inspector in New-York, to be on margin of river.
57. Penalty on persons not being inspectors for branding casks, &c.
58. Penalty for exposing beef or pork to sun, &c. after inspection.
59. Penalty for intermixing or shifting beef or pork after being branded.
60. Penalty for slaughtering cattle or hogs contrary to this Article.

Beef and
pork, when
to be in-
spected.

§ 31. No beef or pork, with the exceptions stated in the next section, shall be exported or shipped for exportation from this state, unless it shall have been previously inspected, pickled and branded by an inspector duly qualified, and according to the provisions of this Article.

Compiled, with some amendments, from the following statutes: 2 R. L., 324; Laws of 1814, 149; 1815, 238; 1821, 9; 1825, 437; see Laws of 1843, ch. 202.

Id. Excep-
tions.

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§ 32. The preceding section shall not extend to beef or pork, exported or shipped to either of the provinces of Upper or Lower Canada, by way of the lakes, or of the river St. Lawrence; nor to beef or pork brought into this state from any of the United States, and packed and branded agreeably to the laws of the state whence it is brought; nor shall it be construed to prevent any licensed butcher from putting up beef in barrels, half-barrels, tubs or kegs, for ship stores, or in kegs or tubs for exportation, if such beef be put up by the butcher killing the same, and the name of such butcher, and the weight contained, be branded on the head of each barrel, half-barrel, keg or tub.

Penalty.

§ 33. Every person who shall ship, or attempt to ship any beef or pork, contrary to the provisions of the two last sections, shall forfeit the sum of fifteen dollars for every barrel and half-barrel so shipped or attempted to be shipped.

See Laws of 1843, ch. 202.

Inspector's
bond.

§ 34. Every inspector of beef and pork, before he shall enter on the duties of his office, shall give a good and sufficient bond, with one or more sureties, to the people of this state, to be approved of by the clerk of the county in which such inspector may reside, both as to the form of such bond, and the competency of the surety or sureties, in the penalty

of two thousand dollars, conditioned for the faithful performance of his duties as such inspector, under the laws of this state; which bond shall be duly filed in the office of such county clerk.

§ 35. Every such inspector shall provide himself with a good and sufficient store or yard, capable of receiving and storing such beef and pork, as may be brought to him for inspection, in such place, as will be most accommodating to employers, and best calculated to facilitate their business; but nothing shall be allowed for storage of any inspected beef or pork, if it shall be removed and taken away within three days after notice given to the owner or agent, of its being re-packed. Store or yard.

§ 36. All barrels in which any beef or pork shall be re-packed, shall be made of good seasoned white oak or white ash staves and heading, free from every defect; and each barrel shall contain two hundred pounds of beef or pork. Barrels, how made, &c.

§ 37. Such barrels shall measure seventeen and a half inches, between the chimes, and be twenty-eight inches long, and hooped with twelve good hickory, white oak, or other substantial hoops; if the barrel be made of ash staves, it shall be hooped with fourteen hoops, at least. lb.

§ 38. Such staves, and heads, shall be made of good thick stuff, the heads not less than three quarters of an inch thick; and each and every stave, on each edge, at the bilge, shall not be less than half an inch thick, when finished. lb.

§ 39. Such hoops shall be well set and drove, and the barrels branded on the bilge with at least the initial letters of the cooper's name; the half barrels shall contain not less than fifteen, nor more than sixteen gallons, and be made in proportion to, and of like materials as a whole barrel, and shall contain one half the quantity of beef and pork of the whole barrel. lb.

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§ 40. All beef and pork, which shall be re-packed in, and exported from the counties of Suffolk, Kings and Queens, may be packed in barrels as nearly straight as may be, made of good seasoned red oak staves and heading of the growth of the said counties respectively, free from sap and every defect, and made otherwise as above directed; and without being subject to a re-examination, may be exported from the city of New-York. lb.

§ 41. Every inspector shall examine and sort all beef and pork, that he shall inspect, and shall brand none but such as is well fattened, and packed in casks of the proper dimensions. Inspector to examine.

§ 42. There shall be three qualities of pork, that may be branded on inspection: Qualities of pork.

1. The first quality shall be denominated "mess pork," and shall consist of the sides of good fat hogs, exclusive of all other pieces; and each barrel containing it, shall be branded on one of its heads, "Mess Pork:"

2. The second quality shall be denominated "prime pork,"

TITLE 1.

of which there shall not be, in a barrel, more than three shoulders, the legs being cut off at the knee joint, nor more than twenty-four pounds of heads, which shall have the ears and snouts cut off, the snouts cut off to the opening of the jaws, and the brains and bloody grizzle taken out of the heads; and the rest of the pork to constitute a barrel of prime, shall be made up of side pieces, neck and tail pieces; and one head of every barrel of such pork, shall be branded, "Prime Pork:"

3. The third quality shall be denominated "cargo pork," of which there shall not be in a barrel more than thirty pounds of head and four shoulders, it shall be otherwise merchantable pork; and shall be branded on one head of each barrel, "Cargo Pork:"

4. Side pork so re-packed, shall be cut from the back-bone to the belly, in pieces of about five inches wide, and which in weight shall not be under four pounds; otherwise the barrels containing the same shall not be branded as merchantable.

Salt and
pickle.

§ 43. Into every barrel of pork branded by an inspector, under the preceding section, there shall be put not less than sixteen quarts of salt, equal in weight to good and pure Turks-Island salt, and a strong new pickle; but if such pork is inspected and branded when fresh, then there shall not be less than twenty-four quarts of salt of the same quality above designated put into every barrel, exclusive of strong new pickle.

Bad pork.

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§ 44. No thin, soft, rusty, meazly or tainted pork, shall in any case be branded under the foregoing provisions; but pork of that description shall be marked by the inspector on the head of every barrel containing it, with paint, and by such marking its true character shall be designated.

What beef
to be re-
packed for
exportation

§ 45. No beef shall hereafter be re-packed, in barrels, for exportation, unless it be of fat cattle not under three years old; and all such beef shall be cut into pieces, as square as may be, and which shall not exceed twelve, nor be under four pounds in weight.

Qualities.

§ 46. All beef which an inspector shall find on examination to have been killed at a proper age, and to be fat and merchantable, shall be sorted and divided for packing and re-packing, in barrels and half-barrels, into four different sorts, to be denominated "extra mess," "mess," "prime," and "cargo beef"

1. Extra mess beef shall consist of none but the most choice pieces of the largest and fattest cattle, and weighing not less than six hundred pounds of beef, excluding the hide and tallow:

2. Mess beef shall consist of the choice pieces of such beef, as is large and well fattened, without hocks, shanks, clod or necks, and may, or may not, contain two choice rounds out of the same cattle, not exceeding ten pounds each:

3. Prime beef shall consist of choice pieces of good fat

cattle, of which there shall not be more in a barrel, than one half neck, nor more than two shanks, with the hocks cut off of the hind-legs at the smallest place above the joint:

4. Cargo beef shall be of fat cattle, with a proportion of good pieces, and not more than one-half of a neck, three shanks with the hocks cut off in the same manner as in prime, in a barrel, and to be otherwise merchantable:

On one of the heads of each barrel and half-barrel, containing the proper quantity of beef of any one of the qualities above described, the inspector shall brand the words "Extra Mess Beef," or "Mess Beef," or "Prime Beef," or "Cargo Beef," according to the quality of the beef inspected.

§ 47. Into every barrel of beef, that shall be so inspected and re-packed, there shall be put not less than twenty quarts of salt, equal in weight to good Turks-Island salt, four ounces of saltpetre, and in addition, a strong new pickle.

Salt, &c.

§ 48. All bloody and neck pieces of beef offered for inspection, before they shall be put up and branded, shall lie in salt, or salt and pickle, a sufficient length of time to extract the blood, to the satisfaction of the inspector.

Bloody and neck pieces.

§ 49. All beef and pork re-packed, within this state, shall be pickled with strong good pickle, made of any kind of good clean salt, as much as will dissolve in good fresh water; and if the barrels and half-barrels shall be larger than the dimensions prescribed in this Article, they shall be condemned by the inspector, or be filled up by him with good pieces of beef or pork, at the expense of the owner, if the owner shall so elect.

Pickle, how made.

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§ 50. On the head of every barrel and half-barrel of merchantable beef or pork, inspected and re-packed, shall be distinctly branded the weight it contains, with the first letter of the christian name, and the surname at full length, of the inspector, who has inspected the same, or both names at full length, with the words "New-York City," if inspected in the city and county of New-York; and the name of the county, and the words "State of New-York," if inspected and branded in any other county.

Barrels, how made.

§ 51. All beef, killed according to the rites and customs of the people, called Jews, shall be packed and put up according to the directions of this Article, and shall be branded with the additional brand of that society, and may be packed and put up in ten and five gallon kegs.

Beef for Jews.

§ 52. All the provisions of the twenty-sixth and twenty-seventh sections in the preceding Article of this Title, shall be construed to apply to the inspector, and the inspection, of beef and pork in the city of New-York, and the certifying of the damage thereof, in the same manner and to the same extent as if the words "beef and pork," were inserted in those sections in place of the word "flour," wherever it occurs therein.

Preceding sections adopted.

§ 53. Every inspector shall have fifteen cents, for each barrel, and ten cents, for each half-barrel of beef or pork he

Compensation of inspector.

TITLE 2.

shall inspect, salt and re-pack ; ten cents for flagging, pegging, nailing, salting and pickling ; three cents for each hoop put by him on any cask ; and such fees shall be paid before the beef or pork inspected shall be taken from the store or yard of the inspector.

Prohibition.

§ 54. No inspector of beef and pork shall be in any wise concerned in purchasing any cattle or hogs, with an intention to pack the same for sale, or in any manner to become a partaker of the profits or loss of any beef or pork, when the same is intended for packing, under the penalty of five hundred dollars for each offence.

Ib.

§ 55. No inspector shall inspect, or brand, any cask of beef or pork out of the city, or county, for which he shall be appointed, nor shall an inspector in any case, lend or hire out his brands, to any person whatever, under the penalty of twenty-five dollars for each barrel so inspected or branded.

Penalty.

Ib., city of New York.

§ 56. The store or yard of every inspector in the city and county of New-York, shall be on the margin of the East or North River, and no such inspector shall inspect and re-pack any beef or pork, at any other place, than in his store or yard, under the penalty of fifteen dollars, for every barrel or cask so inspected.

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Penalty.

§ 57. Every person, other than an inspector duly authorised, who shall brand any cask of beef or pork in the manner directed by this Article, shall forfeit the sum of fifteen dollars, for each and every cask, so branded.

Ib.

§ 58. No owner or dealer in beef and pork, shall suffer the same, after it shall have been inspected, to be exposed to the heat of the sun, or inclemency of the weather, longer than twelve hours, under the penalty of five dollars for every such offence.

Ib.

§ 59. Every person who shall intermix, take out or shift any beef or pork of any barrel or cask inspected or branded as in this Article is required ; or put into any barrel inspected and branded, any other beef or pork for sale or exportation ; or alter or change the brand or mark of any inspector, shall for every such cask or barrel so altered, shifted, changed, intermixed or branded, forfeit the sum of twenty-five dollars.

Ib.

§ 60. Every person interested in slaughtering cattle or hogs, or causing the same to be slaughtered, for the purpose of having the same barrelled for inspection, contrary to the provisions of this Article, shall forfeit the sum of twenty-five dollars for every head of cattle or hogs so slaughtered, or caused to be slaughtered.

See Laws of 1832, ch. 310; 1844, ch. 276.

ARTICLE THIRD.**OF THE INSPECTION OF POT AND PEARL ASHES.**

SEC. 61. Ashes not to be shipped, without inspection.

62. Certain may be exported without re-inspection.

63. Casks in which ashes are to be put.

SEC. 64. Duty of inspectors in inspecting.

65. Penalty on inspector for entering on invoices, &c., any cask not weighed.
66. Weigh-note, or copy, presumptive evidence.
67. If cask be defective, inspector to put it in repair.
68. If not, cask to be condemned, and new one furnished.
69. Casks furnished to be noted on weigh-note.
70. Inspector to enter on books and weigh-note, the marks of casks.
71. To keep ashes in a dry place.
72. May search vessels, and seize ashes illegally shipped.
73. To remove those seized to his store, and to inspect them.
74. To sell them at auction.
75. Penalty for receiving for exportation, ashes not inspected.
76. Penalty upon inspector trading in ashes.
77. Ashes, &c., in New-York, to be sold by weigh-note only.
78. Penalty for counterfeiting brand-marks.
79. Penalty for misdating invoice, &c.
80. Inspectors in New-York and Albany may appoint assistants.
81. Fees of inspectors.
82. Inspectors allowed expenses of putting ashes in shipping condition; storage.

§ 61. No pot or pearl, ashes shall be shipped for exportation from this state, except to the provinces of Upper and Lower Canada, or down the Susquehannah or Allegany rivers, unless they shall have been duly inspected and branded, according to the provisions of this Article; and all ashes shipped for exportation, contrary to this prohibition, shall be forfeited to the people of this state.

Ashes, when to be inspected.

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This Article was compiled, with some amendments, from the following statutes: Laws of 1822, 160; 1827, 323; see Laws of 1843, ch. 202.

§ 62. All pot and pearl ashes, duly inspected in any city or place of trade, on the Hudson river, above the city of New-York, or on the Erie canal, may be exported from the place of such inspection, or be sold in and exported from the city of New-York, without being subject to re-inspection.

§ 63. All pot and pearl ashes subject to such inspection, shall be put in casks of good seasoned white oak, or white ash timber, well made, hooped with substantial hoops, for the distance of, at least, ten inches from each end; the staves not to be more, than thirty-one, nor less than thirty inches in length, and the head of a potash barrel shall not exceed twenty inches, nor be less than nineteen inches, in diameter; and that of a pearlash barrel shall not exceed twenty-three inches, nor be less than twenty-one inches in diameter. No inspector shall brand casks not agreeing with the description given in this section.

Ashes, how to be put up.

Act of 14th November 1828.

§ 64. It shall be the duty of every inspector of pot and pearl ashes,

Duty of inspector.

1. To empty the casks containing ashes brought to him for inspection, and to examine and determine the quality of the ashes, and repack the same, putting the ashes of each quality in a separate cask:

2. To brand, in plain letters, and figures on each casks containing ashes of the first quality, the words "First Sort;"

TITLE 2.

of the second quality, the words "Second Sort;" and of the third quality, the words "Third Sort:" together with the words "Pot Ash" or "Pearl Ash," as the same may be; also his own name, and that of the place where the ashes are inspected; and on one head, the year when such inspection is made:

3. To weigh each cask, and to mark with a marking iron, on the branded head, the weight thereof, including tare, and the weight of the tare, under the same:

4. To collect the crustings or scrapings of the barrels and casks of potash, unfit for inspection, having the same brand, and to weigh and put the same in some suitable cask; and to deliver to the owner or his agent, a weigh-note signed by him of such scrapings and crustings, entered on the back of the copy of the inspection bill, designating therein, the quantity taken, from each lot separately marked.

5. To brand the word "condemned" on every cask which he shall discover to contain ashes fraudulently adulterated with stone, sand, lime, or other improper substance:

[548] 6. To make and deliver to the owner or his agent, an invoice or weigh-note, under his hand, of the ashes by him inspected, containing the weight of each cask and of the tare, and distinguishing the quality thereof, in the manner before directed, and to enter the same, in a book, to be kept by him for that purpose:

7. To make and enter in his book another invoice or weigh-note, in which shall be contained the original private marks and numbers, and the scrapings and crustings in each lot, and the quality, weight and tare of each barrel, and specifying, as particularly as possible, the extent and damage, appearing on such inspection, and the apparant cause thereof, whether by exposure or injury in the course of transportation, or in consequence of the original putting up of such ashes; and to deliver, if required, a true copy of such weigh-note, to the owner of the ashes inspected, or his agent.

Penalty for
violation of
duty.

§ 65. If any inspector shall enter on any invoice, weigh-note or bill of inspection, any cask of ashes, before the same shall have been emptied out and the cask weighed, he shall be liable to a fine of five dollars for each cask so entered; and also shall be guilty of a misdemeanor.

Weigh-note

§ 66. Every weigh-note, or copy of a weigh-note, signed, or certified, by an inspector, on which there shall be endorsed a certificate, under the hand and seal of office of the clerk of the county where the inspector resides, showing that at the date of such weigh-note or copy, the subscriber was an inspector of pot and pearl ashes, and that the hand writing appears to be his, shall be received as presumptive evidence of the facts contained therein, in all courts and places in this state.

ART. 8.
Defection
in casks.

§ 67. If any cask, containing pot or pearl ashes, when delivered to an inspector for inspection, shall be defective and unfit for shipping, owing to the want of coopering repairs, the inspector shall put the cask in a good shipping condition, if the cost of such repairs shall not exceed the sum of seventy-five cents.

§ 68. If a defective cask cannot, in the opinion of the inspector, be sufficiently repaired for the sum of seventy-five cents, he shall condemn the same, and shall furnish a substantial new cask, for which he shall be allowed the actual cost, not exceeding one dollar and twenty-five cents, to be paid to him by the owner of the ashes inspected, or his agent.

Ib. cask,
when to be
condemned,
&c.

§ 69. Every cask so furnished shall be noted by the inspector in the weigh-note and copy thereof, in which he shall also specify the original marks and numbers of the cask for which such new cask is substituted.

Ib. entries
to be made.

§ 70. The inspector shall also enter in his book, and on the margin of the weigh-note delivered by him, the original marks and numbers of every cask repaired by him, and the expense of such repairs.

Ib.

§ 71. Every inspector shall keep all casks of ashes delivered to him for inspection, whilst they remain in his possession, in some dry place, safe from the injuries of the weather, and under a tight roof; and every inspector violating this provision, shall forfeit to the owner the sum of ten dollars for every cask of ashes injured by his neglect, besides the actual damages sustained by such owner.

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Ashes to be
kept dry.

Penalty.

§ 72. Every inspector of pot and pearl ashes shall have full power, and it shall be his duty, to enter on board of any ship or vessel, within the limits of the city or county, for which he is appointed, which he shall suspect to have on board any ashes shipped for exportation contrary to law, and to search for, and if discovered, to seize and take into his possession, all casks of ashes so illegally shipped.

Powers and
duties of
inspector.

See Laws of 1843, ch. 202.

§ 73. Such inspector shall remove all casks so seized by him to his store or office of inspection, and shall there inspect the same according to the provisions of this Article, and shall deliver a weigh-note of such inspection, signed by him, to an auctioneer of the city or county in which the seizure shall be made.

Ib.

See Laws of 1843, ch. 202.

§ 74. Such auctioneer shall proceed to advertise and sell such ashes by public auction, and shall pay the proceeds, deducting the customary expenses of sale, to such inspector, who, deducting therefrom his fees on inspection, and ten per cent for his services and expenses, shall pay the balance to the treasurer of this state.

§ 75. Every owner, consignee, and master of a vessel, who shall receive on board of his vessel for exportation, contrary

Penalty on
owner, &c.
of vessel.

TITLE 1.

Barrels,
how made.

be packed for inspection, shall be made of well-seasoned, white, red, black or rock oak, white ash, or white pine timber.

§ 87. Except in the county of Jefferson, every such barrel or half barrel shall have twelve good hoops, and be perfectly tight; the length of a stave for a barrel shall be twenty-eight inches, and the distance between the chimes, not less than twenty-six inches, and the diameter of the head, from stave to stave, sixteen and an half inches; the staves for every half-barrel shall be twenty-four inches long, and the diameter of the head be thirteen inches.

Laws of 1835, ch. 92, repealed secs. 85, 88, 95, 96, 97, 98, 99.

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Fish to be
salted and
branded.

§ 89. It shall be the duty of every person who shall put up or barrel any fish for exportation, except in the county of Jefferson, to put one bushel of good salt into each barrel of fish, so put up, and to brand the same with the name of the fish contained therein, and with the initials of his own christian and surnames, and the name of the place where the fish shall be put up.

Proceed-
ings of in-
spector.

§ 90. Every inspector, to whom fish shall be brought for inspection, shall open one of the heads of the barrel in which it shall be contained, and if the fish be sound and merchantable, and there shall be a sufficient quantity of salt for its preservation, he shall brand his name, and the place of his residence, on the head of such barrel; if the fish be unsound, the inspector shall destroy it. If the barrel be not full, or do not contain a sufficient quantity of salt, the inspector shall fill it with sound and merchantable fish, or add a sufficient quantity of salt, as the case shall require.

Ib.

§ 91. If it shall appear to the inspector, that a part of the fish so examined by him is unsound, and a part sound, he shall separate the sound from the unsound, and re-pack, fill up, salt, inspect, and brand the barrel, in the manner directed in the preceding section.

Weight of
salmon.

§ 92. Every barrel of salmon, or salmon-trout, inspected, shall contain two hundred pounds weight, and every half-barrel, one hundred pounds weight; and on one of the heads of every such barrel or half-barrel, the weight of the fish contained therein, shall be marked or branded by the inspector.

Shad.

§ 93. Shad offered for inspection shall be packed in barrels and half barrels of the size and quality of those in which beef and pork are required, by law, to be packed, and shall be re-packed, inspected and branded in the same manner as salmon.

Fish in
Suffolk, &c.

§ 94. All fish duly inspected in the counties of Suffolk, Queens and Kings, may be shipped and exported from the city of New-York, without being subject to re-examination.

See Laws of 1835, ch. 92.

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Penalty.

§ 100. Every person who, with intent to defeat the provisions of this Article, shall intermix, take out or shift any fish, in any barrel or cask inspected and branded, or put into

ART. 4

any such barrel or cask, any other fish, for sale or exportation, or deface or change the mark or brand of any inspector, shall, for each offence, forfeit the sum of twenty-five dollars,

Penalty.

§ 101. Every person who, contrary to the provisions of this Article, shall export to any foreign port, or offer to sell for such exportation, any fish not duly inspected, shall forfeit a sum equal to the full value of the fish, so exported or offered for sale.

Fees.

§ 102. Every inspector of fish shall be allowed the following fees, to be paid, by the owner, or person having charge of the fish offered for inspection :

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1. For every barrel of pickled fish, by him inspected and re-packed, thirty-seven and a half cents, and nineteen cents for every half barrel :

2. For every barrel and half-barrel of pickled fish, by him inspected, and not re-packed, twelve and a half cents :

3. For every barrel and half-barrel of dry-salted fish by him inspected, twelve and a half cents :

4. For every tierce of salmon, inspected by him, fifty cents; and for every keg, twelve and a half cents; and the same fees shall be allowed for fish condemned by the inspector, as for fish inspected, re-packed and branded.

Extra compensation.

§ 103. Every inspector shall also be allowed a reasonable compensation for his expenses and trouble for necessary cooerage, for filling up with sound and merchantable fish, for adding salt, and for destroying unsound fish; and the compensation and fees of the inspector shall, in all cases, be a lien on the fish inspected.

Limitation.

§ 104. The provisions of this Article shall not be construed to apply to fish put up and packed in foreign countries, and imported into this state; or put up and packed in any other state agreeably to the laws of such state.

ARTICLE FIFTH.

OF THE INSPECTION OF FISH OR LIVER OIL.

Sec. 105. Fish oil to be inspected.

106. Duty of inspectors of fish oil.

107. Persons holding fish oil, to put it in a convenient place.

108. Penalty for counterfeiting brands; and other penalties.

109. Powers of inspectors in New-York and Troy.

110. Fees of inspectors.

111. All oils, except fish or liver oil, exempt from inspection.

§ 105. No liver oil, commonly called fish oil, shall be bought, sold or bartered in, or in any manner shipped, exported or conveyed from, the cities of New-York, Albany, and Troy, and the villages of Brooklyn, Lansingburgh and Waterford, unless it shall have been inspected, gauged and branded, agreeably to the provisions of this Article.

Liver oil to be inspected

This Article is a revision of the following statutes: Laws of 1818, 54, 1819, 8; see Laws of 1843, ch. 202.

§ 106. It shall be the duty of each inspector of fish oil,

Duty of inspector.

TITLE 2.

1. To gauge and inspect any quantity of fish oil, whenever required; and to make search for fish oil within his district, and to inspect and gauge the same:

2. To brand on each cask so inspected and gauged, the whole number of gallons it shall gauge, the quantity of water, the quantity of sediment, and the quantity of pure oil therein; together with his own name, and the name of the place for which he was appointed:

3. To make, subscribe, and deliver to the owner or holder of the oil, a certificate exhibiting, in separate columns, the quantity of each of the before mentioned ingredients, contained in the whole parcel of oil inspected.

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Duty of
person
offering
oil.

§ 107. It shall be the duty of all persons holding fish oil, to put the same in a convenient position for gauging or inspecting, whenever required by the proper inspector.

Penalty for
counter-
feiting
brands.

§ 108. Every person who shall counterfeit or alter the brands made by an inspector: or who shall mix, or in any manner adulterate any cask of oil, after it shall have been branded; or who shall buy, sell, or barter any oil subject to inspection, which has not been inspected in any place, in which an inspector is authorised to act; or who shall convey, or cause to be conveyed from such place, any such oil which has not been inspected; or who, upon emptying any cask of fish oil, shall not immediately efface the inspector's brands; shall forfeit the sum of twenty-five dollars for each offence.

Powers of
inspectors.

§ 109. The powers of the inspector of fish oil for the city of New-York, shall extend to and include the village of Brooklyn; and those of the inspector for the city of Troy, shall extend to and include the villages of Lansingburgh and Waterford.

Fees of
inspectors.

§ 110. Every inspector for gauging, inspecting, branding, and certifying the contents of each cask of oil inspected by him, shall be entitled to receive twenty cents from the owner or holder of such oil, who may charge one half of the fees paid by him to any subsequent purchaser.

Certain oils
exempt.

§ 111. All other oils than liver oil, commonly called fish oil, shall be exempt from inspection under the provisions of this Article.

See Laws of 1836, ch. 475.

ARTICLE SIXTH.**OF THE INSPECTION OF LUMBER.**

Sec. 112. Lumber not to be exported until inspected.

113. How lumber to be measured; deduction to be made.

114. Inspectors to mark number of feet.

115. Contents of mahogany how stated.

116. Penalty for shipping without inspection.

117. Penalty for shipping shingles without inspection.

118. Penalty for inspecting lumber without authority.

119. Inspectors not to employ deputies; not to trade in lumber.

120. Fees of inspectors.

121. When inspector to be paid according to agreement:

Sec. 122. All shingles offered for sale may be inspected.

123. Bundles of shingles to be branded, &c.

124. Duty of the owner of shingles so presented for inspection.

125. What shingles to pass inspection; not to be subjected to re-inspection.

126. Penalty on inspectors, deputies, &c.

127. Fees for inspecting and branding such shingles.

§ 112. No timber, plank, boards, scantling, or cypress shingles, shall be exported by sea from this state, to any port out of the territorial limits of the United States, that shall not have been duly inspected by an inspector of lumber, according to the provisions of this Article.

Timber, plank, &c., to be inspected.

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This Article, except the last six sections, is a revision of the following statutes: 1 R. L., 237; Laws of 1819, 47; Laws of 1822, 241; see Laws of 1843, ch. 202; 17 W., 327.

§ 113. The inspectors of lumber shall measure the entire contents, without any deduction, of raft timber and spars; except in cases where by express agreement, they are required both to measure and inspect; in which cases there shall be no other deduction made, than what, in their judgment, is the exact quantity of unsound timber contained therein. They shall render to their employers, bills of the lumber inspected, stating the number of feet contained therein, and whether the same has been measured only, or both measured and inspected; and if inspected, they may make and state four qualities, if in their opinion it becomes necessary.

How measured.

§ 114. The inspectors shall mark with a marking iron, on all timber by them inspected, except mahogany, red cedar and live oak, the number of feet contained therein, either in cubic or superficial measure; the number of feet in mahogany, red cedar and live oak timber, shall be expressed in their bills, severally annexed to the number of each log; and all raft timber shall be numbered, and the bills made in like manner.

How marked.

§ 115. The inspectors, when employed to measure or inspect mahogany logs or square timber, shall set forth in the bill or return of such measurement, together with the number and contents in feet, the length, width and thickness of each log or square piece so measured.

Mahogany or square timber.

§ 116. Every person who shall ship on board of any vessel, for exportation to any foreign port, contrary to the provisions of this Article, any lumber that has not been inspected by an inspector, shall forfeit for every thousand feet superficial measure so shipped, the sum of two dollars and fifty cents.

Penalty for shipping uninspected lumber.

See Laws of 1843, ch. 202.

§ 117. Every person who shall ship on board of any vessel, for exportation to any foreign market out of this state, any cypress shingles which have not been inspected by an inspector, and which shall not be at least twenty-two inches in length, three inches and one half of an inch in breadth, and three-eighths of an inch thick, shall forfeit the sum of two dollars for every thousand shingles so shipped.

Th. Cypress shingles.

See Laws of 1843, ch. 202.

TITLE 2.
Penalty for
inspecting
without au-
thority.

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§ 118. Every person, not appointed and authorised as an inspector, who shall measure or inspect any lumber or cypress shingles, in any place for which an inspector is appointed, shall forfeit to the inspectors of lumber, in such place, the sum of ten dollars, for every such offence. But the inspectors residing in Troy, may inspect at Gibbonsville or West Troy, in the county of Albany; and the inspectors of Albany may inspect at Bath and Greenbush, in the county of Rensselaer.

See Laws of 1834, ch. 196.

Prohibition.

§ 119. No inspector of lumber shall employ any deputy, to inspect in his name; and every inspector who shall, directly or indirectly, buy or sell any lumber or cypress shingles, except for his own use, shall be deemed guilty of a misdemeanor, and on conviction, shall forfeit his office.

Fees of inspector.

§ 120. Every inspector of lumber shall be entitled to receive the following fees, to be paid, one-half by the buyer, and one-half by the seller:

1. For every ton of forty cubic feet of raft timber, measured and inspected, eight cents; and if measured only, five cents:
2. For every thousand feet, superficial measure, of boards and plank, thirty-seven and a half cents, if inspected; but if measured only, twenty-five cents:
3. For every thousand feet, inch measure, of beams and scantling, twenty-five cents:
4. For every thousand feet, superficial measure, of mahogany, one dollar:
5. For every thousand cypress shingles inspected, eighteen cents.

Fees.

§ 121. In all cases where, from the character of the lumber, the fees of the inspector cannot be calculated under the preceding section, he may receive such compensation as his employer shall consent to pay, provided he make known to such employer, the fees actually allowed in this Article.

Shingles sold in this state.

§ 122. All shingles offered for sale in this state, may be inspected by the inspectors of lumber.

Act of the 19th of April, 1828, 332, ch. 261.

Bundles to be branded.

§ 123. Each bundle of shingles so inspected, shall be branded across the butts or sides, as follows: No. 1, No. 2, No. 3, No. 4, or with the letter R, or with the letter O, together with the name of the inspector, and the name of the place where inspected:

No. 1 shall be at least eighteen inches long, four inches wide, half an inch thick at the butt, straight rifted, and full breasted:

No. 2 shall be at least eighteen inches long, seven-sixteenths of an inch thick at the butt, four inches wide, straight rifted, and full breasted:

No. 3 shall be at least seventeen inches long, average four inches wide, and none shall be less than three inches wide, three-eighths of an inch thick at the butt, straight rifted, and

shall hold their width three-fourths of the way to the thin end, and be well shaved:

No. 4 shall be at least fifteen inches long, average four inches wide, and none shall be less than three inches wide, three-eighths of an inch thick at the butt, straight rifted, and shall hold their width three-fourths of the way to thin end, and be well shaved:

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All shall be made of good stuff and free from imperfections, shall be cut square across the butts, and shall be packed in good and sufficient bands of hard wood, and well secured by wedges:

Refuse shingles shall be branded R, and shall consist of all such as will not pass inspection for either of the other classes, unless they shall be so bad as not to be worth half the price of No. 1, in the estimation of the inspector, in which case they shall be branded O.

Act of the 19th of April, 1828, 332, ch. 261.

§ 124. It shall be the duty of the owner of shingles presented for inspection, or his agent, to place such shingles as are required to be inspected, in such a situation as that the bundles may be conveniently examined by the inspector or his assistants.

Duty of owners of shingles.

§ 125. No quality of shingles shall pass inspection unless so packed as to contain by admeasurement, either one-quarter thousand, one-half thousand, or three-quarters of a thousand in each square bundle. Shingles inspected under the preceding provisions shall not be subjected to re-inspection in this state.

How to be packed.

§ 126. If any inspector, his deputy, or assistants, shall be guilty of any fraud or neglect in the inspection of shingles, contrary to the true intent and meaning of the preceding provisions, or shall brand or mark any shingles which he has not inspected, he shall forfeit and pay for each bundle so falsely branded or marked, one dollar, to be sued for and recovered by the person or persons injured thereby.

Penalty.

§ 127. The inspector shall be allowed for his fees for inspecting and branding at the rate of twelve cents per thousand for all shingles he shall so inspect, one-half to be paid by the buyer, the other half by the seller, but in no case shall the inspector be the purchaser.

Fees.

ARTICLE SEVENTH.

OF THE INSPECTION AND CULLING OF STAVES AND HEADING.

Sec. 128. No staves or heading to be exported without inspection.

129. What staves to be culled as merchantable.

130. Inspector-general to superintend cullers in his county.

131. Cullers in New-York and Albany to make monthly return.

132. Disputes how to be determined.

133. Fees of inspector-general; by whom paid.

134. Fees of cullers in New-York and Albany.

135. Fees of cullers in other cities and counties.

TITLE 1.

- SEC. 136. Inspector-general to have power to search vessels, &c.
 137 & 138. Cullers in other counties to apply for a warrant to search vessels.
 139. Cullers may seize staves or heading shipped contrary to law.
 140. Penalty for shipping staves or heading contrary to this Article.
 141. Inspectors-general not to trade in staves, &c.
 142. Inspectors-general to furnish cullers a copy of laws.
 143. Inspectors-general to make annual report.

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Staves and
heading to
be inspect-
ed.

§ 128. No staves or heading shall be exported by sea from this state, to any port out of the territorial limits of the United States, unless they shall be inspected and culled, in the manner herein after provided, and on such inspection shall be declared merchantable.

This Article is a revision of the following statutes: 2 R. L., 336; Laws of 1821, 33; 1823, 49; 1827, 246; see Laws of 1843, ch. 202.

Manner of
inspection.

§ 129. All staves and heading, intended for such exportation, shall be inspected, by an inspector-general or culler of staves and heading, at the port whence they are to be shipped, and none shall be culled as merchantable, on such inspection, unless they shall be of the following description:

Butt staves.

1. All butt staves shall be made of good white oak timber, and shall be of the following dimensions: the long butts shall be five feet six inches long, the short butts four feet six inches long, and both at least five inches broad when dressed, clear of sap, two inches thick on the thinnest edge, and not more than two and an half inches thick, in any place, and shall be regularly split with the grain of the wood, and free from twist, and be otherwise good and sufficient:

Pipe staves.

2. All pipe staves shall be made of good white oak timber, and shall be four feet six inches long, and shall work three inches broad when dressed, clear of sap, and shall be three quarters of an inch thick on the thin edge, regularly split with the grain of the wood, and shall not have more than six worm holes, and be otherwise good and sufficient:

Hogshead
staves.

3. All white oak hogshead staves shall be made of good timber, and shall be three feet six inches long, and shall work three inches broad when dressed, clear of sap, and shall be three quarters of an inch thick on the thin edge, regularly split with the grain of the wood, and shall not have more than four worm-holes, and shall be otherwise good and sufficient:

Barrel
staves.

4. All barrel staves shall be made of good white oak timber, and shall be two feet eight inches long, and shall work three and a half inches broad when dressed, clear of sap, and shall be three quarters of an inch thick on the thin edge, regularly split with the grain of the wood, and shall not have more than four worm holes, and shall be otherwise good and sufficient:

Hogshead
heading.

5. All hogshead heading shall be made of good white oak timber, and shall be two feet eight inches long, and shall not be less than five inches broad, clear of sap, two thirds of which shall be fit for middle pieces, and shall not be less than three fourths of an inch thick on the thin edge, regularly split

with the grain of the wood, and be otherwise good and sufficient:

ART. 7.

6. All red oak, or rock oak hogshead staves, shall be three feet six inches long, three and a half inches broad, including sap, or three inches broad clear of sap, and shall be three quarters of an inch thick on the thin edge.

Hogshead
staves.

[500]

§ 130. Every inspector-general of staves and heading, shall superintend the cullers of staves and heading within the city and county for which he is appointed, and shall give them such instructions and directions, as he may deem necessary to carry into execution the laws prescribing their duties; he may remove from office any such culler who, in his opinion, shall violate or neglect, or be incompetent to perform, his duties, and shall give immediate notice to the governor, of every vacancy that shall occur in the office of any culler, under his superintendence.

Duty of in-
spector-
general.

§ 131. The cullers in the cities and counties of New-York and Albany, shall obey such instructions as from time to time they shall receive from the inspector-general, for the city and county for which they shall respectively be appointed, and each of them, as often as once in every month, shall make a return to such inspector-general, of the staves and heading culled by him, specifying the different times, and the names of the persons for whom they were culled.

Duty of
cullers.

§ 132. The inspectors-general shall have the sole power of determining all disputes that shall arise respecting the culling of staves and heading in the cities and counties for which they are appointed; but in counties where there is no inspector-general, every dispute between the buyer and seller of staves and heading, respecting the culling thereof by the culler employed for that purpose, shall be submitted to two persons, one to be chosen by the buyer, and the other by the seller, who shall be associated with such culler, and their determination, or that of any two of them, shall be conclusive.

Disputes
how decided

§ 133. Each inspector-general shall be entitled to receive, on every thousand merchantable staves and heading, which shall be culled in the city and county for which he is appointed, ten cents, one half to be paid by the buyer, and the other half by the seller; and for all such staves or heading as are culled out, and not merchantable, he shall be entitled to receive, from the proprietor thereof, the same compensation.

Inspectors'
fees.

§ 134. The cullers in the city and county of New-York, and in the city and county of Albany, shall be entitled to receive, as a compensation for culling every thousand pipe staves, sixty cents; for every thousand hogshead staves and heading, fifty cents; for every thousand barrel staves, forty cents; for every thousand long butt staves, one dollar and twenty cents; for every thousand short butt staves, one dollar, and no more; one half to be paid by the buyer, and the other half by the seller; and for all such staves or heading as are culled out and not merchantable, they shall be entitled to receive from the

Culler's fees.

[501]

TITLE 1.

proprietor thereof the same compensation, in all cases: ten hundred staves or heading to a thousand, and no more.

Culler's fees

§ 135. The cullers in the other cities and counties of this state, shall be entitled to receive the following compensation, computing twelve hundred staves or heading to a thousand: For culling every thousand pipe staves, fifty cents; for every thousand hogshead staves and heading, thirty-seven and an half cents; for every thousand barrel staves, twenty-five cents; for every thousand long butt staves, one dollar and twenty-five cents; for every thousand short butt staves, one dollar: one half of which compensation shall be paid by the buyer, the other by the seller. For staves and heading that shall be culled out as not merchantable, the owner shall pay to the culler the price of culling merchantable staves and heading.

Powers and duties of inspector-general in New York.

§ 136. The inspector-general for the city and county of New-York shall have full power, and it shall be his duty to enter on board of every ship or vessel within the limits of such city or county, which he shall suspect to have on board, shipped for exportation, any staves or heading not culled according to law, or condemned on culling as not merchantable, and to seize and cause to be re-landed, all such staves and heading that he shall discover on such search, and all such as he shall find to be sawed in two or more parts. The staves and heading so seized shall be forfeited, and be sold by the inspector-general; and the proceeds thereof, deducting necessary expenses, shall be paid by him to the chamberlain of the city of New-York, for the use of the poor of that city.

See Laws of 1843, ch. 202.

Duty of cullers

§ 137. It shall be the duty of every culler, in every county, except in the city and county of New-York, who shall suspect that any staves or heading not culled, or condemned on culling, have been shipped for exportation to a foreign market, on board of any vessel within the limits of the county for which he is appointed, to apply to some justice of the peace in the same county, and to make oath before him of such suspicion, and the causes thereof.

See Laws of 1843, ch. 202.

Proceedings

§ 138. The justice so applied to, if he shall deem the suspicion well founded, shall issue his warrant to such culler, authorising him to enter on board of any vessel within the limits of the county, and to search for and make discovery of any such staves or heading, shipped for exportation contrary to law.

Duty

§ 139. If such culler shall discover on board of any such vessel any staves or heading shipped for exportation contrary to law, he shall seize the same, and cause them to be re-landed, and shall detain them in his possession, until the owner thereof shall have paid the expense of such search and re-landing.

ART. A
Penalty on
shipper.

[see]

§ 140. Every person who shall ship for exportation, contrary to the provisions of this Article, any staves or heading, shall forfeit five dollars for every thousand of such staves and heading, so illegally shipped; and every master of a vessel shall forfeit two dollars and fifty cents for every thousand of staves and heading, that he shall take on board his vessel, to be exported contrary to law.

On inspect-
ors and cul-
lers.

§ 141. No inspector-general, or culler of staves and heading, in the city and county of New-York, or in the city and county of Albany, shall buy or sell, either on his own account, or as agent or dealer for any other person, any staves or heading whatever, under the penalty of fifty dollars for each offence; but this section shall not be construed to prevent an inspector-general, or culler, who shall be a cooper, and actually carrying on business as such, from buying staves and heading for the use of his trade.

Duty of
inspector-
general.

§ 142. It shall be the duty of each inspector-general, to furnish to every culler under his superintendence, a copy of this Article, and of every future law that shall be passed, regulating the culling of staves and heading, within the city and county for which he is appointed.

Th. Annual
report.

§ 143. Each inspector-general shall make an annual report to the governor, to be by him laid before the legislature, and in such report shall state what number of the respective kinds, of staves and heading, have been culled during the year for which the report is made, in the city and county for which he is appointed, and shall set forth whether any, and if any, what amendments ought to be made to the laws regulating the culling of staves and heading, within such city and county.

ARTICLE EIGHTH.

OF THE INSPECTION OF FLAX-SEED.

SEC. 144. No flax-seed to be shipped without inspection.

145. Flax-seed for exportation to be put in casks.

146. Casks to be marked or branded.

147. Duty of inspectors.

148. Penalty for acting as inspector without authority.

149. Penalty for lading vessels with uninspected flax-seed.

150. Inspectors may employ deputies.

151. No inspector or deputy to trade in flax-seed.

152. Fees of inspector.

153. To receive fees for measurement in certain cases.

Flax seed
to be in-
spected.

§ 144. No flax-seed shall be shipped for exportation, to any foreign market; from the city and county of New-York, unless it shall have been inspected, approved and branded, according to the provisions of this Article.

This Article is a revision of the act of 1822: Laws of 1822, 148; see Laws of 1843, ch. 202.

How put up.

§ 145. All flax-seed intended for such exportation, shall be put in good and strong casks; such casks shall be of two

TITLE 2

sizes, one size to contain not less than seven, and the other not less than three and a half bushels.

(583)
Casks, how
marked.

§ 146. Every such cask, when the flax-seed contained therein shall have been cleaned, shall be marked, or branded, with the initials of the christian name, and with the surname, at full length, of the person by whom the flax-seed was cleaned, and the name of the city or county where it was cleaned.

Duty of
inspector

§ 147. It shall be the duty of the inspector of flax-seed,

1. To examine all such casks of flax-seed, intended for exportation; and in such examination, to open at least one cask of every twenty he shall inspect, and as many more as he may think necessary :

2. To ascertain, by measurement, whether such casks contain the proper quantity of bushels and half bushels, and to bore every cask to ascertain the quality of the flax-seed therein :

3. To brand on every cask made, marked and branded according to the provisions of this Article, and containing the proper quantity of flax-seed, and on no others, the initials of his christian name, and his surname, at full length, together with the name of the city where inspected, on the quarter, and in a legible manner :

4. To brand on each cask of flax-seed of the first quality, the word "First;" on each cask of the second quality, the word "Second;" and on each cask of the third quality, the word "Third."

Penalty.

§ 148. Every person, not authorised by law, who shall exercise the duties of the inspector of flax-seed, shall forfeit to such inspector the sum of one hundred dollars, for each offence.

Id.

§ 149. Every person who shall lade, or attempt to lade, any vessel with flax-seed not inspected according to law, for the purpose of exporting the same from the city of New-York, to any foreign place, shall forfeit for every such cask, the sum of ten dollars.

See Laws of 1843, ch. 202.

Deputies.

§ 150. The inspector of flax-seed may employ one or more deputies, to inspect in his name, and for whose acts he shall be responsible.

Prohibition.

§ 151. No inspector or deputy inspector, of flax-seed, during the time that he shall continue in office, shall be directly or indirectly engaged or interested in buying, selling, or cleaning flax-seed, either on his own account, or the account of other persons; and every inspector or deputy who shall violate this prohibition, shall forfeit, for each offence, the sum of five hundred dollars.

Fees of in-
spector.

§ 152. The inspector of flax-seed shall be entitled to receive for inspection, the following fees :

1. For every cask of flax-seed of seven bushels, five cents :
2. For every cask of three and an half bushels, three cents :

Such fees shall be paid by the person offering the flax-seed for inspection, who may charge one half of the amount to the buyer, in addition to the price of the seed.

§ 153. If the inspector shall find, by measurement, that any cask inspected by him, does not contain the proper quantity of flax-seed, according to its size, he shall be entitled to receive from the person offering the flax-seed for inspection, fifty cents for such measurement, in addition to his regular fees for inspection. [564]
Fees of in-
spector.

ARTICLE NINTH.

OF THE INSPECTION OF SOLE LEATHER.

SEC. 154. Inspector to inspect all sole leather offered.

155. He may inspect leather in any adjoining town.

156. Inspector to provide himself with proper scales; to stamp leather.

157. He may make deduction from leather not dry.

158. Fees of inspectors in New-York; who to pay them.

159. In what counties leather may be sold without inspection.

§ 154. It shall be the duty of each inspector of sole leather, whenever required, to inspect any sides of sole leather which shall be offered to him for that purpose, within the place or county for which he is appointed. Duty of in-
spector.

This Article was compiled from the following statutes: 2 R. L., 341; Laws of 1823, 120; 1824, 364; 1825, 238; 1826, 99, 284.

§ 155. Every such inspector may also inspect sole leather, in any other city, town or village of his county, than that for which he is appointed, or in any adjoining county, if there be no inspector appointed for such city, town or village, or in such adjoining county.

§ 156. It shall be the duty of each inspector to provide himself with proper scales and weights, to enable him to perform the duties of his office; to weigh every side of sole leather that he shall inspect; and to impress thereon in words at full length, Dy. Man-
ner of in-
spection.

1. His own surname, and the name of the place for which he is an inspector:

2. The word "Best," if the leather be manufactured of good hides, and in the best manner:

3. The word "Good," if the leather be manufactured of good hides, in a merchantable manner:

4. The word "Damaged," if the leather be manufactured of damaged hides, in a merchantable manner:

5. The word "Bad," if the leather be not of one of the qualities above mentioned:

6. The weight of the side shall also be impressed thereon, either in figures, or in words at length.

8 Cow., 45.

§ 157. Every inspector may make such a deduction as he may judge reasonable, from the actual weight of every side of leather inspected by him, that shall not be perfectly dry; and if any such side of leather shall afterwards dry away, so

TITLE 2

as to weigh five per cent. less than the weight marked thereon, the inspector shall make good to the purchaser, the loss resulting to him, from such deficiency in weight.

See Laws of 1830, ch. 300.

[555]
Fees for
inspecting.

§ 158. Every inspector of sole leather in the city and county of New-York, shall be entitled to receive two cents, and every such inspector in any other place or county, four cents, for each side of sole leather that he shall inspect, weigh and seal. The fees of the inspector shall, in the first instance, be paid by the seller; but the purchaser shall be liable to him for one-half of their amount.

Prohibi-
tions in
certain
counties.

§ 159. In the counties of Onondaga, Herkimer, Ulster, Oneida, Jefferson, Madison, Seneca, Steuben, and Montgomery, no manufacturer of, or dealer in, sole leather, shall be compelled to carry any sole leather owned or manufactured by him, to be inspected previous to a sale; but in every other county and place in this state, for which an inspector of sole leather is or shall be appointed, no sole leather shall be sold, unless it shall have been previously examined, weighed and sealed, by an inspector duly authorised; and every seller who shall violate this provision, shall forfeit the sum of five dollars for every side of sole leather so illegally sold.

See Laws of 1843, ch. 128; 1833, ch. 310.

ARTICLE TENTH.

OF THE INSPECTION OF HOPS.

- Smo. 160. No hops to be exported without inspection.
 161. If inspected in Albany, may be exported without a re-inspection.
 162. Hops for exportation to be put up in bags; weight of bags.
 163. Bags to be marked or stamped.
 164. Powers and duties of inspectors.
 165. Penalty for selling condemned hops for any other than condemned.
 166. Penalty for intermixing improper substances with hops.
 167. Penalty for receiving on board of a vessel uninspected hops.
 168. Penalty for counterfeiting marks on bags.
 169. Fees of inspectors.

Hops to be
inspected.

§ 160. No hops shall be exported from this state, until they shall have been submitted to the examination of an inspector of hops, and have been inspected by him, agreeably to the provisions of this Article. All hops shipped for exportation, contrary to the provisions of this section, shall be forfeited.

This Article is a revision of the following statutes: Laws of 1819, 144; 1820, 137; see Laws of 1843, ch. 202.

Provision
as to
Albany.

§ 161. Hops inspected in the city of Albany, may be exported thence, or be sold in and exported from the city of New-York, without being subject to re-inspection in the city of New-York.

Hops to be
put in bags.

§ 162. All persons intending to export hops from this state, shall put the same in bags, which shall contain not more than four hundred pounds, nor less than one hundred and fifty pounds; and shall submit them, after the expiration of ten

days from the time they shall have been bagged, to the examination of an inspector.

§ 163. Every person who shall put up hops for sale or exportation, shall mark or stamp on each bag of hops, in a legible manner, the initials of his christian name, and his surname at full length, before the removal of such bag from the place where the hops shall be put up; and every person violating this provision, shall forfeit five dollars for every bag so removed without being marked or stamped. Bags to be marked.
(566)

§ 164. Every inspector of hops shall have power, and it shall be his duty, Duty of Inspector

1. To provide himself with a sufficient store, in some place which may be convenient to his employers, for the purpose of storing hops brought to him for inspection :

2. To examine hops brought to him for inspection, upon satisfactory proof that they have been bagged for ten days, and not otherwise :

3. To put the hops in different bags, according to their quality, respectively, and on each bag containing hops of the first quality, to mark the words "Hops, first sort;" of the second quality, the words "Hops, second sort;" of the third quality, the words "Hops, third sort;" and of all other inferior quality of hops, "Refuse hops," together with his own name, and that of the place where the hops are inspected, and the date of such inspection, in words and letters at full length :

4. To weigh each bag of hops, and to mark thereon the total weight of the bag and its contents in pounds, and to deliver to the owner a weigh-note of such weight, stating therein the quality of the hops, and distinguishing them in the manner as before directed :

5. To mark the word "Condemned," on each bag of hops which he shall discover to be fraudulently mixed, with any foreign or improper substance :

6. To enter on board of every vessel within the limits of the city and county where he is authorised to inspect, to search for hops shipped or shipping contrary to the provisions of this Article, and to seize and take into his possession all such hops discovered by him :

7. To sell at public auction all hops so seized, and to pay the proceeds of such sale, deducting expenses, and ten per cent. for his services, to the officers having the care of the poor of the city or county where the seizure shall be made, for the use of such poor.

§ 165. Every person who shall offer for sale, or sell any hops which have been condemned by an inspector, for any other than condemned hops, shall forfeit the sum of twenty-five dollars for every bag so offered for sale, or sold. Penalty.

§ 166. Every person who shall intermix with any hops any foreign or improper substances, or in any manner adulterate their quality, shall be deemed guilty of a misdemeanor, pun-

TITLE 2.

- ishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.
- Penalty.** § 167. Every master of a vessel who shall receive on board for exportation, any bags of hops, not inspected according to the provisions of this Article, shall forfeit the sum of ten dollars for every bag so received by him.
- [567]**
- Id.** § 168. Every person who shall counterfeit on any bag of hops, any of the marks of an inspector, or empty any bag of hops so marked, for the purpose of putting therein other hops for sale or exportation, without first erasing such marks, shall, for each offence, forfeit the sum of one hundred dollars.
- Fees of inspector.** § 169. Every inspector of hops shall be entitled to receive ten cents for every hundred pounds of hops inspected by him, to be paid one half by the buyer, and one half by the seller; and for every hundred pounds of condemned hops, he shall receive the same fees, to be paid by the person offering such hops for inspection.

ARTICLE ELEVENTH.**OF THE INSPECTION OF DISTILLED SPIRITS.**

- Sec. 170.** Spirits to be inspected in New York.
171. Standard of domestic distilled spirits.
172. (Repealed.)
173. Penalty for adulterating spirits.
174. Penalty for altering proof after inspection, and for not cutting out marks.
- 175 & 176. (Repealed.)

**Distilled
spirits to be
inspected.**

§ 170. No spirits distilled within the United States, and exceeding the quantity of twenty gallons, shall be sold in the city of New-York, unless they shall have been inspected, and the casks containing the same, branded according to the provisions of this Article; and for every gallon sold contrary to the provisions of this section, the seller shall forfeit a sum equal to the value thereof.

This Article was compiled, with some variations, from the act of 1814, Laws of 1814, 155; see Laws of 1843, ch. 202.

Standard.

§ 171. The standard of domestic distilled spirits shall be as follows: All such spirits, at the temperature of sixty degrees according to Fahrenheit's thermometer, and the specific gravity of which shall be 9335, as compared to the gravity of pure distilled water estimated at 10,000, shall be deemed first proof; and the strength of any spirits below or above first proof, shall be calculated decimally, or by the per centage in reference to the above standard, and shall be denoted as so many per cent. below or above first proof as the actual difference in strength shall be.

Sect. 172, repealed by Laws of 1831, ch. 97.

**[568]
Punishment
for adultera-
ting.**

§ 173. Every person who shall adulterate any distilled spirits, or spirits in a state of distillation, with any poisonous or unhealthy substance, and every person who shall sell such spirits, knowing them to be so adulterated, shall be guilty of

a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried; the fine in no case to exceed one thousand dollars, nor the imprisonment the term of four years.

§ 174. Every person who shall fraudulently put any thing whatever into any cask of distilled spirits branded by an inspector, for the purpose of altering the real or apparent proof, or the bead or nature of the spirits contained therein; and every person who, without first obliterating the marks of the inspector, shall put in any such cask, after the same shall have been emptied, in whole or in part, of the spirits contained therein when inspected, any other spirits or spirituous liquor whatever; and every person who shall sell, or in any manner dispose of any such cask, when emptied, without effacing the marks of the inspector, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment.

Ib. For altering inspected spirits.

§§ 175, 176 repealed by Laws of 1831, ch. 97.

ARTICLE TWELFTH.

OF THE INSPECTION OF LEAF TOBACCO IN THE CITY OF NEW-YORK.

SEC. 177. Inspector of leaf tobacco in city of New-York, to appoint one or more deputies.

178, 179 & 180. (Repealed.)

181. Persons counterfeiting marks, &c. deemed guilty of misdemeanor; penalty.

182. Penalties upon inspector and his deputies, for various acts of misconduct.

§ 177. It shall be the duty of the inspector of leaf tobacco in the city of New-York, to appoint one or more deputies under him, who, together with the said inspector, shall, before entering upon the duties of his or their office, take and subscribe the oath required by the constitution.

Inspector to appoint deputies.

Act of the 19th of April, 1828, ch. 274.

§§ 178, 179, 180 repealed by Laws of 1834, ch. 56.

§ 181. If any person or persons shall forge, alter or counterfeit, or attempt to forge, alter or counterfeit any marks or numbers which may, by such inspection, be put on any cask of tobacco as aforesaid, or if any person shall fraudulently change or re-pack any tobacco so inspected as aforesaid, from one cask into another cask, with the intent to defraud, or impose one quality of tobacco for another quality; or shall fraudulently or with intent to deceive, remove any stave or heading whereon such inspector may have put such marks and numbers as aforesaid; or shall forge, change or alter in any manner, any such weigh-note, or the marks and numbers which such inspector shall have attached to any samples which he may have drawn for exhibition; such person or persons so offending, shall, on conviction thereof before any court having cognizance thereof, be deemed guilty of a misdemeanor, and may be fined or imprisoned, or both, at the discretion of such court.

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Penalties for counterfeiting marks, &c.

[570]

§ 182. If any such inspector or any of his deputies, shall falsely or fraudulently mark any tobacco submitted to him or

Penalties on inspector and deputies.

TITLE 1.

them for inspection, or shall make and deliver any false or fraudulent weigh-bill or note of any tobacco by him or them so inspected, such inspector or deputy shall, on conviction thereof, before any court having jurisdiction thereof, be deemed guilty of a misdemeanor, and may be fined, or imprisoned, or both, at the discretion of such court: and further, if any inspector or his deputy shall unreasonably refuse or neglect to do the duties of his office, such inspector or deputy, on conviction thereof, shall be liable to treble damages of any person aggrieved thereby, who may sue for the same in his own name and for his own use.

Act of the 19th of April, 1828, ch. 274; see Laws of 1834, ch. 56.

ARTICLE THIRTEENTH.

GENERAL PROVISIONS.

- Sac. 183, 184 & 185. Unclaimed articles, when to be sold, &c.
- 186. Inspectors to account annually to comptroller.
- 187. Every such report to be accompanied by an affidavit.
- 188. If no such sales, inspector to transmit affidavit to comptroller.
- 189. Penalty for neglecting to make such report or affidavit.
- 190. Penalty for unnecessary delay, in inspecting articles.
- 191. Penalty for fraud by inspector.
- 192. Penalty for obstructing inspectors in their duties.
- 193. Penalty for counterfeiting, &c., brands or marks.
- 194. Penalty for counterfeiting marks, &c., upon hogsheds, &c.
- 195. Penalties by whom prosecuted for, and how appropriated.
- 196. Penalties incurred by inspectors prosecuted by district attornies.
- 197. Inspectors to report annually.
- 198. Penalty for not complying with preceding section.
- 199. Meaning of term "inspector."

Articles not
claimed.

§ 183. If any articles subject to inspection, and stored with an inspector, shall not be claimed by the owner within one year from the time they shall have been inspected, such inspector shall deliver to an auctioneer in the city or county in which he shall reside, an invoice or bill of such articles, specifying the quantity and quality, and the brands or other marks thereon, and also the name and residence of the owner, and of the person delivering the same for inspection, according to his information or belief.

Laws of 1822, 164, § 17; 1819, 147, § 12.

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To be sold
at auction.

§ 184. Such auctioneer shall sell such articles at public auction, and shall cause an advertisement of the sale to be inserted for at least six weeks in succession immediately previous thereto, in the state paper, and in a newspaper printed in the city or county of his residence. He shall state in the advertisement the time and place of sale, and the quantity, quality, and marks of the articles to be sold, and the names of the owner and his agent, according to the bill delivered to him.

Laws of 1822, 164, § 17; 1819, 147, § 12.

Account of
sale to be
rendered.

§ 185. If, before the day of sale, the owner shall not claim such articles, and pay the legal fees and charges thereon, the

auctioneer shall complete the sale, and render an account thereof, to the comptroller, and pay the proceeds to the treasurer of this state, deducting the customary charges and expenses of the sale, and the legal fees and charges of the inspector, which shall be paid by such auctioneer. The monies paid into the treasury shall remain therein for the benefit of the owner, and be paid to him on his furnishing to the comptroller satisfactory evidence of his right.

§ 186. Every inspector shall annually on the first day of January, transmit on oath to the comptroller, a duplicate of every invoice or bill of such articles, which, during the preceding year, may have been delivered to any auctioneer, and the amount received by him on the sales of any such articles, from any auctioneer.

Inspector to report.

§ 187. Every such report of an inspector of pot and pearl ashes shall be accompanied by an oath or affirmation taken and subscribed before some proper officer, that he has delivered to some auctioneer of the city or county, (mentioning his name) an invoice, weigh-note, or bill of inspection of all the unclaimed ashes which had been in his hands one year or more, and that he has duly accounted with the owner or agent for all the ashes delivered to his care for inspection, as the law directs, and that he has not by himself or by any person in his employ, made out an invoice, weigh-note, or bill of inspection, of a later date than the time such ashes were duly inspected, and that the same were emptied out of the cask or casks, and duly examined, at the date of every such invoice, weigh-note, or bill of inspection.

Report to be accompanied by oath.

§ 188. If no such invoice or bill shall have been delivered to any auctioneer during the preceding year, by any such inspector, he shall, notwithstanding, transmit to the comptroller, on the first day of January in each year, an affidavit, stating that there have been no articles subject to inspection stored with him, which have remained not claimed by the owner, within one year from the time they shall have been inspected.

Affidavit required.

§ 189. Every inspector who shall neglect to make any report or affidavit required in either of the three last sections, shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding twenty-five hundred dollars, and by imprisonment not exceeding one year; and the comptroller shall direct the district attorney of the county where such inspector resides, to prosecute for such offence.

Penalty for neglect.

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§ 190. Every inspector, who shall be required to inspect any articles subject to his inspection, if not then engaged in the business of his office, shall proceed without delay to inspect the same; and for every three hours of unnecessary delay in such inspection, he shall forfeit to the person delayed, three dollars, in addition to the damages which such person shall actually sustain.

Penalty for delaying to inspect.

§ 191. Every inspector guilty of any fraud, mal-practice, or

Punish-

TITLE 1
ment for
fraud.

connivance in the discharge of his duties, or who shall offer any fee or reward to any person in order to obtain the profits of inspecting articles subject to his inspection, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court, by which he shall be tried.

Opposing
inspector,
misdemean-
or.

§ 192. Every person who shall oppose or obstruct, any inspector in the execution of his duties or powers, shall be guilty of a misdemeanor, punishable by fine and imprisonment.

Counter-
feiting
brands.

§ 193. Every person who shall counterfeit, or fraudulently alter or deface the brands or other marks of an inspector, shall be guilty of a misdemeanor, punishable by fine and imprisonment, the fine not to exceed two thousand dollars, nor the imprisonment three years.

It.

§ 194. Every person who shall counterfeit, or fraudulently alter or deface, the brands or other marks put upon any hogshhead, barrel or half-barrel, containing flour, meal, beef, pork, pot or pearl ashes, fish, fish oil, liver oil, or distilled spirits, by the owner thereof, shall be deemed guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Penalties,
how sued
for.

§ 195. Every penalty imposed in each preceding Article of this Title; and not otherwise specially appropriated, except such as shall be incurred by inspectors, shall be prosecuted for, by any inspector, acting under the Article, the provisions of which shall be violated, whose powers extend to the place in which the offence shall be committed. The monies recovered, deducting such sum, not exceeding one half of the amount, as shall be allowed to the inspector prosecuting, for his expenses and trouble, by the court in which the recovery or conviction shall be had, shall be paid to the chamberlain or treasurer of the city, or treasurer of the county, in which the offence shall be committed, for the use of the poor of such city or county.

It.

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§ 196. Every such penalty which shall be incurred by an inspector, shall be prosecuted for by the district attorney of the county in which such inspector shall reside; and the monies recovered, deducting a reasonable counsel fee to the district attorney, to be settled by the court in which the recovery or conviction shall be had, shall be paid and applied in the manner specified in the last preceding section.

Inspectors
to report to
legislature.

§ 197. Every inspector acting under any Article of this Title, shall report annually to the legislature, and on or before the first day of February in each year, the quantity, and, as near as may be, the quality and value of the produce, provisions or merchandize, inspected by him during the year ending on the first day of January next preceding the making of such report, together with the amount of the fees and emoluments derived from his office; and shall also communicate in his report, such information possessed by him, as may

tend to the improvement of the quality, or increase in the quantity, of the articles subject to his inspection.

Laws of 1823, 245, § 5; 1827, 24; see Laws of 1840, ch. 323.

§ 198. Every inspector who shall not comply with the provisions of the preceding section, shall forfeit for each offence the sum of two hundred dollars, to be recovered by the attorney-general, to the use of the people of this state, and in their name.

Penalty for neglect.

§ 199. The term "inspector," as used in each preceding Article of this Title, shall be construed to mean an inspector of the provisions, produce or merchandize to which the Article relates; and as used in this Article, shall be construed to mean every inspector mentioned in the preceding Articles, and also, (except in the two last preceding sections,) the inspectors-general and cullers of staves and heading.

"Inspector" defined.

See Laws of 1829, ch. 152, ch. 53; 1830, ch. 325.

TITLE III.

OF THE TARE OF BUTTER FIRKINS, AND THE PACKING AND SALE OF PRESSED HAY.

- Sec. 1. Butter and lard firkins to be weighed and branded.
 2. The brand to be taken as the tare of the firkin.
 3. Penalty for offering any firkin not stamped, and putting on false mark.
 4. By whom penalties recovered, and how applied.
 5. Pressed Hay how to be marked and branded.
 6. Prohibition against putting up damaged hay, &c.
 7. Penalty for violation of preceding provisions.
 8. Provision as to weight by which pressed hay may be sold.
 9. Fees for inspecting hay.

§ 1. Every firkin in which any butter or lard shall be packed for sale, shall be carefully weighed by the person packing the same, and the true weight thereof, be marked or stamped in a legible and durable manner on one of the staves or heads of such firkin, together with the initial letters of the name of the person packing such butter or lard.

Tare.

Laws of 1818, 96.

§ 2. On every sale of any firkin of butter or lard, the weight so marked or stamped thereon, shall be deemed to be the tare of such firkin.

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lb.

§ 3. Every person who shall knowingly offer for sale any firkin of butter or lard, not so marked or stamped, shall forfeit for each offence the sum of three dollars; and every person who shall put any false mark on any such firkin, or who shall sell, or offer to sell, any butter or lard in any firkin which he shall know to be falsely marked, shall forfeit for each offence the sum of five dollars.

Penalties.

§ 4. The penalties given in the last section, shall be applied to the use of the city, town or village, in which the offence shall be committed: and may be recovered in the name of any

lb.

TITLE 4.

Pressed hay
Regulation.

officer, whom the town or the corporation of such city or village, shall appoint to sue for the same.

§ 5. Every person who shall put up and press any bundle of hay for market, shall mark or brand, in a legible manner, the initials of his christian name, and his surname, at full length, and the name of the town in which he resides, on some board or wood attached to such bundle of hay.

Laws of 1828, ch. 267; 4 H., 209.

Prohibition.

§ 6. No person shall put or conceal, in any such bundle of hay, any wet or damaged hay, or other materials, or hay of an inferior quality to that which plainly appears upon the outside of such bundle.

Penalty.

§ 7. Any person who shall put up, or cause to be put up and sold, any bundle of pressed hay in violation of the preceding provisions, shall be liable to be prosecuted in an action of debt, before any court having jurisdiction thereof, by the person aggrieved thereby; and if the court before whom such suit is brought, shall be satisfied, from the testimony given, that any of the preceding provisions have been violated, such court shall render judgment for a penalty of one dollar against the defendant, in favor of the plaintiff, together with such damages as he has suffered thereby, with costs of suit; but if such court shall be satisfied that no such violation has been committed, the costs shall be awarded against the plaintiff.

Weight.

§ 8. Such hay may be sold with or without inspection, and with or without deduction for tare, and by the weight as marked, or any other standard weight, as agreed upon between the buyer and seller.

Laws of 1835, ch. 238.

Fees.

§ 9. No person shall receive any fees or compensation for inspecting any pressed or other hay, where he is the purchaser thereof for himself, or as agent for any other person.

See Laws of 1832, ch. 141; 1831, ch. 171; 1835, ch. 183.

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TITLE IV.

OF HAWKERS AND PEDLERS.

- Sec. 1. No person to peddle without license.
 2. Application for licenses to be made to secretary of state.
 3. What duties must be paid before applicant entitled to a license.
 4. Secretary to grant license upon applicant's showing payment of fees.
 5. Licenses to be issued in April, and renewed annually.
 6. Penalty for peddling without license, or contrary to terms of it.
 7. Penalty for refusing to show license when demanded.
 8. Any citizen may apprehend a person found peddling without license, &c.
 9. Duty of justice before whom such pedler may be taken.
 10. In prosecution for penalties under this Title, when no costs allowed to defendant.
 11. No suit to be maintained, unless brought within 60 days after offence.
 12. Persons sued for executing this Title, may plead general issue, &c.

Pedlers to
obtain
license.

§ 1. No person shall be authorised to travel, from place to place, within this state, for the purpose of carrying to sell or

exposing to sale, any goods, wares or merchandize, of the growth, produce or manufacture of any foreign country, unless he shall have obtained a license as a hawker and pedler, in the manner herein after directed.

2 R. L., 228, § 1 & 2; Laws of 1840, ch. 70.

§ 2. Every person desirous to obtain a license as a hawker or pedler, shall apply to the secretary of this state, and shall deliver to him a note in writing, signed by such applicant, or his authorized agent, and stating in what manner the applicant intends to travel and trade, whether on foot, or with one or more horses, or other beasts of burthen, or with any sort of carriage, or boat.

License,
how ap-
plied for.

§ 3. Every such applicant for a license as a hawker or pedler, before he shall be entitled to a license, shall pay into the treasury the following duties: If he intend to travel on foot, the sum of twenty dollars for one year's license; if he intend to travel and carry his goods with a single horse, or other beast carrying or drawing a burthen, or with a boat, or boats, the sum of thirty dollars for one year's license; and if he intend to travel with any vehicle or carriage drawn by more than one horse, or other animal, the sum of fifty dollars for a year's license: which several sums shall be reduced proportionally for any shorter term not less than six months.

Duties to
be paid.

Laws of 1840, ch. 70.

§ 4. It shall be the duty of the secretary of state, upon the payment of his fees, to grant to every such applicant, who shall deliver to him, with the notice above required, the receipt of the treasurer, countersigned by the comptroller, showing the payment of the proper duties, a license under his seal of office, and signed by himself, or his deputy, authorising such applicant to travel and trade within this state as a hawker, or pedler, in the manner stated in the notice so delivered, for the term of one year from the date of such license.

License,
how grant-
ed.

§ 5. Such licenses may be issued at any time, for any term not less than six months, nor more than one year, and every license granted, or to be granted, shall be renewed on the expiration thereof by the secretary of state, if such renewal be applied for, on the same terms and conditions that the original license was granted.

And when.

§ 6. Every person who shall be found travelling and trading within this state, contrary to the provisions of the first section of this Title, or contrary to the terms of any license that may have been granted to him as a hawker, or pedler, shall, for each offence, forfeit the sum of twenty-five dollars, to the use of the poor of the town in which the offence shall be committed.

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Penalty for
peddling
without
license.

2 R. L., 229, § 4.

§ 7. Every person so trading, who shall refuse to produce a license as a hawker or pedler, to any officer or citizen who shall demand the same, shall, for each offence, forfeit the sum of ten dollars, to the overseers of the poor of the town in

Penalty for
refusing to
produce
license.

TITLE 4.

which the demand shall be made, for the use of the poor therein; and every such offender, who, after notice, shall refuse or neglect to pay the above penalty, shall be committed by the justice before whom the conviction shall be had, to the jail of the county in which the offence shall have been committed, for the term of one month.

Proceed-
ings there-
on.

§ 8. Any citizen may apprehend and detain any person who shall be found trading as a hawker or pedler, without license, or contrary to the terms of his license, or who shall refuse to produce a license, in violation of the provisions of this Title; and may convey the offender before any justice of the peace in the town or county in which he shall be apprehended. It shall be the duty of the overseers of the poor of the several towns of this state to enforce the provisions of the law in the manner herein prescribed whenever any violation thereof within their respective towns shall come to their knowledge.

2 R. L., 230; Laws of 1840, ch. 70.

Id.

§ 9. It shall be the duty of such justice, if a sufficient license to authorise such trading be not produced to him, and the fact of trading be proved to him, either by the confession of the person so apprehended, or the oath of competent witnesses, to convict the offender of such offences against this Title, as shall be so confessed or proved; and to issue his warrant on each conviction, directed to some constable of the county in which the conviction shall be had, commanding such constable to cause the sum of twenty-five dollars, with costs not to exceed five dollars, to be forthwith levied by distress and sale, at public vendue, of the goods, wares and merchandize of the offender. The monies collected on such warrant, exclusive of the costs, shall be paid by the justice, to the overseers of the poor of the town in which the offence shall have been committed.

2 R. L., 230, § 7, 8, & 9.

Costs.

§ 10. In every case of a prosecution against any person for the recovery of any penalty given in this Title, no costs shall be allowed to the defendant, if it shall appear that before the commencement of the prosecution, such defendant had refused to produce his license, or to disclose his name when lawfully required; nor in such case shall the defendant be entitled to maintain any action, against the person prosecuting him, or the constable, or other persons by whom he may have been apprehended, or the justice issuing any warrant or other process against him, or before whom he may have been tried, for any of their acts in so prosecuting, apprehending, or trying him.

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2 R. L., 230, § 6 & 8.

Limitation
of suits.

§ 11. No suit or prosecution for the recovery of any penalty imposed in this Title, shall be maintained, unless it shall appear to be brought within sixty days after the commission of the offence charged.

§ 12. Every person who shall be sued for putting in execution this Title, or doing any matter or thing pursuant to its provisions, may plead the general issue, and give the special matter in evidence; and if the plaintiff in any such suit shall not prevail, the defendant shall be entitled to recover treble costs.

ART. 1.
Pleading
and evi-
dence.

See Laws of 1840, ch. 70.

CHAP. XVIII.

Of Incorporations.

(Took effect January 1, 1838.)

TITLE 1. — Of turnpike corporations.

TITLE 2. — Of monied corporations.

TITLE 3. — Of the general powers, privileges, and liabilities of corporations.

TITLE 4. — Special provisions relating to certain corporations.

TITLE I.

OF TURNPIKE CORPORATIONS.

ART. 1. — Of the mode of incorporating turnpike companies, and of the choice and powers of the directors.

ART. 2. — Of the construction of the road, and of the appraisement of damages.

ART. 3. — Of tolls, and their collection.

ART. 4. — General provisions embracing corporations now existing.

ARTICLE FIRST.

OF THE MODE OF INCORPORATING TURNPIKE COMPANIES, AND OF THE CHOICE AND POWERS OF THE DIRECTORS.

- SEC. 1. Persons incorporated to make a turnpike, to be a body corporate.
2. Commissioners to receive subscriptions.
 3. Subscribers to pay ten per cent. on amount subscribed.
 4. Commissioners to give notice of election for directors.
 5. Directors to be elected by a plurality of votes.
 6. Commissioners to deliver to directors, subscription books and monies.
 7. Election to be held annually; at each, persons to preside at next to be chosen.
 8. If election not held on any day fixed by law, may be on some other day, &c.
 9. Persons presiding at election to estimate votes, and declare result.
 10. Stockholders to vote according to number of shares held by them.
 11. Five directors may transact business.
 12. Directors to elect one of their number president.
 13. Board to supply vacancies.
 14. Powers and duties of the president and directors.
 15. For what causes, the company shall cease.
 16. Corporation may be dissolved by the legislature.

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§ 1. All such persons as shall hereafter be incorporated by an act of the legislature, for the purpose of making a turnpike road, shall be a body corporate, by the name given in the act of incorporation; and as such, they and their successors shall have power to purchase, hold and enjoy such real and personal

Corpora-
tion crea-
ted.

TITLE 1

estate, not exceeding the amount to be prescribed in such act, as shall be necessary to fulfil the ends of their incorporation.

1 R. L., 228, § 1.

Books to be opened.

§ 2. Each of the persons who shall be named in such act, as a commissioner for receiving subscriptions, shall furnish himself with a book for that purpose, which shall be kept open for two years, unless one-sixth of the whole number of shares shall be sooner subscribed.

Payment on subscription.

§ 3. Each subscriber shall pay to the commissioner receiving his subscription, and at that time, on each share that he shall subscribe, one-tenth of the sum fixed in the act of incorporation, as the amount of one share, and the residue to the president and directors to be elected, at such time and place, as they shall from time to time require. The shares subscribed shall be deemed and considered to be personal estate.

1 R. L., 228, § 2; 1 Cal., 381; 9 J. R., 357; 1 H., 518.

Notice of choosing directors.

§ 4. As soon as one-sixth part of the whole number of shares fixed in such act, as the capital of the corporation, shall have been subscribed, the commissioners shall, by advertisement to be published in two of the public newspapers printed nearest to the route of the road, give at least thirty days' notice, of the time and place, when and where, the subscribers shall meet to choose directors.

Directors to be elected.

§ 5. At the election so appointed, the commissioners present shall preside; and the subscribers present, or their proxies, by a plurality of votes, shall elect by ballot nine stockholders, to be directors of the corporation for the ensuing year.

Books and money to be delivered to directors.

§ 6. The commissioners shall deliver their respective subscription books, to the directors so chosen at their first meeting, and shall then pay over to such directors, the monies received by them, respectively, on such subscriptions.

Annual election.

§ 7. An election for directors shall thereafter be annually held, on the same day of the same month on which the first election was held; and at each election, including the first, the stockholders present, by a plurality of votes, shall elect by ballot, three persons, to preside at the next succeeding election.

How if not held.

§ 8. If an annual election shall not be held on the day fixed by law, it shall be held in the same manner, and with the like effect, on some early day, to be appointed by the directors then in office, who shall give and publish the same notice thereof, as is required in respect to the first election; and who, after the day on which such election ought to have been held, shall be incapacitated from doing any act as directors, except such as may be necessary to give effect to the election so to be appointed.

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Duty of presiding officer.

§ 9. The persons presiding at each election, shall immediately after receiving the ballots, openly estimate the votes, and thereupon make and subscribe a certificate of the result. Of the first election, they shall make a return to the directors chosen, at their first meeting thereafter.

ART. I.
Rule as to
voting.

§ 10. Each stockholder, in person or by proxy, shall, at each election, be entitled, on the shares then held by him, to one vote for each share, to the number of ten, and for every five shares above that number, to one additional vote.

Quorum.

§ 11. Five directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

President.

§ 12. The directors, at their first meeting after their election, shall elect by ballot one of their number as president.

Vacancies.

§ 13. The board shall supply every vacancy that may occur in the office of a director, and the person chosen shall hold his office until the next annual election. They shall also supply from the directors, every vacancy that shall occur in the office of president; and one of the members present shall be chosen by a plurality of votes, to preside at every meeting of the board, from which the president shall be absent.

§ 14. The president and directors shall have power, and it shall be their duty,

Duties and
powers of
directors.

1. To meet from time to time, at such place as they may deem expedient :

2. To make such by-laws, rules and regulations, as in their judgment, the affairs of the corporation shall require :

3. To appoint such subordinate officers, artists and workmen, as they shall deem necessary to execute the business of the corporation :

4. To continue to receive subscriptions of shares, until their whole capital stock shall be subscribed, unless it shall have been ascertained, that a less sum will be sufficient to fulfil the ends of their incorporation :

5. To demand at such time and in such proportion as they shall see fit, from the respective stockholders, the sums of money due on their respective shares, under pain of the forfeiture of such shares, and of all previous payments thereon, to the corporation :

6. To declare by a by-law in what manner, and under what restrictions, the shares of their capital stock shall be transferable :

7. To construct, complete, and keep in constant repair, the road, with all the necessary buildings and appurtenances, for the making of which they shall have been incorporated :

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8. To keep a fair and just account of all tolls received, and of all monies disbursed, and, deducting costs and charges to make and declare a dividend of the clear profits and income of the road, among the stockholders, on the first Tuesday of May, and the first Tuesday of November, in every year :

9. To publish a notice of each dividend, in one or more of the public newspapers printed nearest to the route of the road, and of the time and place of the payment thereof, and to pay the same accordingly :

10. To report to the comptroller, within six months after the road shall be completed, an account of the expenses of its

TITLE 1.

construction, and to exhibit annually to the comptroller, an account of the sums arising from the tolls, of the disbursements and of the dividends, actually made within the year.

1 R. L., 228, § 9 to 13.

Forfeiture
of corporate
powers.

§ 15. Every company so incorporated shall cease to be a body corporate,

1. If within two years from their incorporation, they shall not have commenced the construction of the road described in the act of incorporation: and,

2. If within five years from such incorporation, such road shall not be completed according to the provisions of this Title, and of the act of incorporation.

Dissolution.

§ 16. Every such corporation may be dissolved by the legislature, when by the income arising from tolls, it shall have been compensated for all monies expended in purchasing, making, repairing and taking care of its road, and have received in addition thereto, an average annual interest at the rate of ten per cent; and on such dissolution, all the rights and property of such corporation, shall vest in the people of this state.

1 R. L., 228, § 14.

ARTICLE SECOND.**OF THE CONSTRUCTION OF THE ROAD, AND OF THE APPRAISEMENT OF DAMAGES.**

SEC. 17. The road to be laid out by commissioners.

18. Duty of commissioners.

19. Commissioners to be paid 3 dollars per day.

20. How roads shall be constructed.

21. Mile stones to be erected.

22. Guide posts to be erected.

23. No director to be concerned in contract for making road.

24. Contractors not to sub-contract.

25. After road laid out, president, &c. may agree with owner of land for purchase, &c.

26. How value of land ascertained, where owner and president, &c. cannot agree.

27 & 28. When company may take possession of land.

[581] 29. Not to take possession of public highway, unless paid for as private property.

30. Appraisement of land on old roads how made, and paid.

31. Pay of the judge and appraisers.

Road, how
laid out.

§ 17. The road directed to be made by each company so incorporated, shall be laid out by three, or any two of three, commissioners to be appointed by the governor; such commissioners must not be interested in any turnpike road, nor live in a county through which the road directed shall pass.

Duty of
commis-
sioners.

§ 18. It shall be the duty of such commissioners,

1. To lay out the road directed, without favor or partiality, according to their best judgment and understanding, in such manner as shall best promote the objects of the corporation, and the interests of the public:

2. To cause to be made an accurate map of their survey of such road, in every county through which it shall pass, desig-

nating therein the several particular points near or through which it passes, and to deposit and file such map in the office of the clerk of the county.

1 R. L., 228, § 3; 8 W., 555.

§ 19. Each commissioner, for each day he shall be necessarily employed in the performance of such duty, shall receive the sum of three dollars, to be paid, together with the expenses of surveys and maps, by the corporation to which the road shall belong.

§ 20. Such road shall be constructed by the president and directors of such corporation, in the manner following: Road, how constructed

1. It shall be laid out not less than four rods wide, and twenty-two feet of such width shall be bedded with stone, gravel, sound wood, or other hard substance, well compacted, and of sufficient depth to secure a good and solid foundation:

2. It shall be faced with gravel or broken stone, of a depth not less than nine inches, in such manner as to secure a firm and even surface, rising in the middle by a gradual arch:

3. The ditches on each side thereof shall, when practicable, be so made, as to render easy the passing of sleighs therein, and shall be so formed as to permit carriages conveniently to pass on and off the turnpike, where it shall be intersected by other roads:

4. It shall be made of such width as may be practicable, not less than twenty-two feet in any one place; and without a ditch on the lower side in each place where, on account of the steepness of side-hills or rocks, it cannot, in the opinion of the commissioners, be made of the full width above required:

5. The lower side, where it shall not be of full width, shall be furnished with a strong and sufficient fender or railing, of the height of at least four feet above the surface of the road along which such fender shall be constructed.

1 R. L., 228, § 5; 21 B., 79.

§ 21. A mile stone or post shall be erected and maintained by the corporation on each mile of the road, on which shall be fairly and legibly marked or inscribed, the distance of such stone or post from the place of the commencement of the road; and when such road shall commence at the end of any other road, having mile stones or posts, on which the distance from any city or town is marked, a continuation of that distance shall in like manner be inscribed.

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Mile stones,
&c.

1 R. L., 228, § 8.

§ 22. A guide post shall also be erected at the intersection of every public road, leading into or from the turnpike, on which shall be inscribed the name of the place to which such intersecting road leads, in the direction to which the name on the guide post shall point. Guide-posts

§ 23. No director of the corporation to which it shall belong, shall be concerned directly or indirectly in any contract for Prohibition.

TITLE 1.

the making or working of the road, or any part thereof, during the time he shall be a director.

1 R. L., 228, § 15; 17 B., 404.

Prohibition.

§ 24. No contractor for the making of such road, or any part thereof, shall make a new contract for the performance of his work, or any part thereof, other than by hiring hands, teams, carriages or utensils, to be superintended and paid by himself, unless such new contract and its terms be laid before the board of directors, and be approved by them.

Land may be agreed for.

§ 25. After the road shall have been laid out by the commissioners, the president and directors of the company to which it shall belong, may agree with the owners of the land through which it shall pass, for the purchase of so much thereof as shall be necessary for the making of the road, and the accommodation of gates, toll-houses, and other works thereto belonging.

1 R. L., 228, § 3.

If no agreement so made, how damages to be assessed.

§ 26. In every case where the owner of land so required, shall be absent from the county, or shall not from any cause be capable in law so to agree, or shall refuse to agree, the value of such land, and the damages to the owners, shall be ascertained, in the manner following:

1. One of the judges not interested in the road, of the court of common pleas of the county in which the land shall be situated, upon application of the president and directors, shall, by an instrument in writing, signed by him, appoint three freeholders of the county, not inhabitants of any town through which the road shall pass, and not interested in the road or lands to be appraised, as appraisers:

2. The president and directors shall give notice to the appraisers of their appointment, and the appraisers, or any two of them, shall thereupon name a day for meeting on the land, and performing the duties required of them; which day shall not be more than twenty, nor less than ten days from such notice of their appointment:

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3. The president and directors shall give at least ten days' notice to the owners of the land required, of the time and place of meeting, so appointed by the appraisers; but if any such owner be absent, or subject to any legal disability to contract, a copy of such notice may be left at the dwelling-house of such owner, or at some public place on the lands to be appraised:

4. Each appraiser, before he shall proceed to execute his trust, shall take and subscribe in writing, before a justice of the peace in the county, the oath or affirmation prescribed in the constitution of this state:

5. The appraisers shall then proceed to view the premises, and without favor or partiality, to assess the damages sustained by the respective owners of the lands deemed necessary

by the president and directors, to be taken and appropriated for the road:

6. They shall make an inquisition, under their hands and seals, or the hands and seals of any two of them, describing such land, and stating the amount of damages, if any, which each owner of lands or improvements so taken and appropriated, has sustained, or will sustain, in consequence thereof:

7. The inquisition shall be acknowledged by the appraisers signing it, before one of the judges of the county in which the lands are situated, and so acknowledged, shall be filed by them, together with their oath or affirmation of office, in the clerk's office of such county, within thirty days after it shall have been made, to be by such clerk recorded in a book for recording deeds, at the expense of the corporation.

1 R. L., 228, § 3; 3 W., 42; 3 J. Ca., 107.

§ 27. The president and directors, upon payment of the several sums so assessed as damages, in the inquisition so made, or upon making a legal tender thereof, when the monies shall be refused, shall be entitled to enter on the lands described in the inquisition, and shall have and hold the same, to them, their successors and assigns forever.

When company may enter on land.

8 W., 555; 12 W., 371.

§ 28. If on any parcel of the lands so described, there shall be no person then living, authorised to receive the damages assessed for such parcel, and such damages shall not have been lawfully demanded, within ten days after the filing of such inquisition, the president and directors may enter thereon, without payment or tender of such damages; but subject to such payment, whenever the same shall be thereafter lawfully required.

1b.

§ 29. Such president and directors shall not enter on and take possession of any public highway, until it shall have been appraised and paid for, in the same manner as private property, and the amount appraised for each highway so taken, shall be paid to the commissioners of highways in the town to which it shall belong; to be by them applied in improving the roads in such town.

1b.

25 W., 367.

§ 30. Whenever an appraisalment shall be made of the lands on any old road, used as such by prescription, on which a turnpike shall be laid out, the appraisers shall set down the value of the soil and of the improvements, and the monies paid by any town for making such improvements, in separate sums; and the sum for which the soil is appraised shall be paid to the owners thereof, and the value of the improvements, and the sums paid therefor, by any town, shall be paid to the commissioners of highways of the town in which such old road shall be situate.

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1b. Old road.

1 R. L., 228, § 3.

TITLE 1.
Pay of
judge and
appraisers.

§ 31. The president and directors procuring the appointment, shall pay to the judge for appointing appraisers, one dollar, and to each appraiser, two dollars for every day he shall be necessarily employed in his duties as such.

1 R. L., 228, § 4.

ARTICLE THIRD.

OF TOLLS, AND THEIR COLLECTION.

SEC. 32. When road complete, governor to appoint persons to inspect it.

83. If made in a workmanlike manner, gates to be erected.

34. Toll-gatherers to be appointed.

35. Persons may be prevented from passing gate until toll paid.

36. When toll not to be exacted.

37. Tolls upon particular carriages.

38. Rates of toll to be kept over gate.

39*. Gates may be changed.

Inspectors
to be ap-
pointed.

§ 32. As soon as the president and directors of any company incorporated under this Title, shall have completed their road, or any ten miles thereof, they shall give notice thereof to the governor, who shall thereupon appoint three discreet freeholders, not interested in any turnpike, to view the road as described in the notice, and to report to him, in writing, whether the same is completed in a workmanlike manner, according to the requisitions of this Title, and of the act of incorporation.

Gates to be
erected.

§ 33. If such report shall be in the affirmative, it shall be the duty of the governor, by license under his hand, and the privy seal of the state, to permit the president and directors, to erect so many gates and turnpikes on the road reported, as shall be sufficient for the collection thereon, of the tolls authorised by law.

1 R. L., 228, § 6; 18 J. R., 397.

Toll-
gatherers.

§ 34. The president and directors shall then appoint toll-gatherers, to collect, at each gate so erected, from the persons using the road, such toll as shall be authorised in their act of incorporation.

21 B., 321.

Their pow-
ers.

§ 35. Each toll-gatherer may detain and prevent from passing through his gate, the persons riding, leading, or driving animals or carriages subject to toll, until they shall have paid respectively the tolls authorised by law.

1 R. L., 228, § 7; 21 B., 212.

When tolls
not to be
collected.

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§ 36. No tolls shall be collected at any gate of any company incorporated under this Title in either of the following cases :

1. From any person passing to or from public worship, or a funeral ; to or from a grist-mill for the grinding of grain for family use ; or to or from the blacksmith's shop to which he usually resorts for work there to be done :

2. From any person going for a physician or midwife, or returning from such errand ; going to or returning from court

when legally summoned as a juror or witness; going to or returning from a militia training, which, by law, he is required to attend; or going to a town-meeting or election at which he is entitled to vote, for the purpose of giving such vote, and returning therefrom:

3. From any person residing within one mile of the gate at which toll is demanded, unless he shall be employed in the carriage or transportation of the property of other persons, not so residing:

4. From troops in the service of this state, or of the United States.

1 R. L., 233, § 7; Laws of 1818, 52; 16 B., 15; 8 J. R., 150; 9 J. R., 356.

§ 37. From carriages having wheels, of which the tire or track is, When tolls not to be collected.

1. Twelve inches wide, no tolls:

2. Nine inches wide, one fourth only of the tolls otherwise payable:

3. Six inches wide, one half only of such tolls,
Shall be collected.

§ 38. It shall be the duty of the president and directors, to affix and keep up, at or over each gate, in some conspicuous place, so as to be conveniently read, a printed list of the rates of toll demandable at such gate. List of tolls

§ 39^a. It shall be lawful for the judges of the county courts of the county in which any toll gate is, or may hereafter be erected on any turnpike road, to determine and fix the location thereof, and to order any such gate to be removed whenever its location shall do injustice to the public, or to the corporation owning such road: such order shall be in writing and be served on the collector of tolls at such gate by one of the said judges, or a commissioner of highways; and after thirty days from the time of such service, it shall not be lawful for the said corporation to receive tolls at such gate until the same shall be removed to such place on said road as shall be approved by the said judges. Location of gates may be changed.

Laws of 1836, ch. 284.

ARTICLE FOURTH.

GENERAL PROVISIONS EMBRACING CORPORATIONS NOW EXISTING.

SEC. 39^b. Five inspectors to be appointed for each county.

40. To inspect all turnpikes in the county.

41. Upon complaint to view road; and order gates to be opened.

42. When gate ordered open, not to be shut without certificate.

43. In certain cases, inspectors to view road out of their county.

44. Penalty for disobeying order to open gate.

45. Inspector to give notice of road being out of repair.

46. And in mean time gate may be ordered to be thrown open.

47. Proceedings of inspector, if notice not obeyed.

48 & 49. Fees of the inspector, and by whom paid.

50. Penalty for delaying travellers or receiving more than legal tolls.

51. When corporation to be liable for penalties.

TITLE I.

SEC. 52. Corporation may commute for tolls.

53. If day of election happen on Sunday, to be held on next day.

54. Penalties for injuring mile-stones, gates, &c. and passing gate without paying toll.

55. Penalty for turning off, to evade payment of toll.

56. Penalty for erecting hoist-gates not equally balanced.

Inspectors,
&c.

§ 39^b. In each county of this state, in which there is or shall be any turnpike road, there shall be not less than three, nor more than five inspectors of turnpikes, neither of whom shall be interested in any turnpike within the state.

2 R. L., 225, § 1; see Laws of 1848, ch. 45.

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Powers.

§ 40. The persons appointed to such office, shall be the inspectors of all the turnpike roads within their county, except in cases where, by the act of incorporation, a special provision for the inspection of the road is made. But where the president, directors and company of any turnpike shall have refused or neglected to obtain the appointment of inspectors of their road, or when there shall be no inspectors of such road in office, or those in office shall refuse or neglect to serve when called upon, the county inspectors, shall, in respect to such turnpike, exercise all the powers conferred by this Article, until inspectors for such road shall be appointed according to the act incorporating the same, and until such inspectors shall accept their appointment and agree to serve.

Duty on
complaint
that road
is out of
repair.

§ 41. It shall be the duty of each inspector to whom a complaint in writing shall be made, that a turnpike road, or a part of such road, in his county is out of repair, without delay to view and examine the road complained of; and if he shall find such complaint to be just, he shall give notice in writing of the defect, to the toll-gatherer, or person attending the gate nearest to each place out of repair, and in such notice, may, in his discretion, order such gate to be thrown open; but no inspector or inspectors shall order such gate to be opened, unless a notice in writing shall have been served on the gate-keeper nearest to the place out of repair, particularly describing such place, at least three days previous to making such order.

2 R. L., 225, § 1 & 3; Laws of 1819, 308, § 1 & 3; Act concerning the Revised Statutes, passed Dec. 10, 1828, § 15; 20 W., 55; 1 Cow., 251.

Proceed-
ings.

§ 42. Immediately after the service of such notice, each gate ordered to be thrown open, shall be opened; nor shall it be again shut, nor any toll be collected thereat, until one of the inspectors for the county, shall have granted a certificate, that the road is in sufficient repair, and that such gate ought to be closed.

6 Cow., 168.

When to
view road
out of their
county.

§ 43. Whenever any part of a turnpike road shall be out of repair, and the gate to which it has relation, is situated in an adjoining county for which inspectors shall have been appointed, such inspectors, upon a complaint in writing, shall

view and examine the road complained of, and proceed thereon according to the provisions of this Article, in like manner as if the road so complained of was within the county where such gate is situated.

6 Cow., 166.

• § 44. Every keeper of a gate ordered to be thrown open, who shall not immediately obey such order, or who shall not keep open such gate until a certificate permitting it to be closed shall be granted, or who, during the time such gate ought to be open, shall hinder or delay any person in passing, or take or demand any tolls from any person passing, shall, for each offence, forfeit the sum of ten dollars to the party aggrieved.

Penalty for not opening gate, &c.

1 Cow., 251.

§ 45. It shall be the duty of each inspector, who, upon due examination, shall have discovered a turnpike road within his county, to be out of repair, or that any gate thereon is placed in a situation contrary to law, to give notice in writing of such defect or default, to one or more of the directors of the company to which such road shall belong.

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Inspector, when to give notice.

2 R. L., 225, § 3; 15 W., 269.

§ 46. In such notice, he shall require the defective road to be repaired, or the gate improperly placed to be removed, within a certain time to be fixed in the notice; and in his discretion, may order, that in the mean time, the gates on such road, or such of them as he shall specify, be thrown open.

Contents of notice.

§ 47. If the requisitions of such notice be not obeyed, it shall be the duty of such inspector, to make immediate complaint to the attorney-general, or the district attorney for the county, whose duty it shall be to prosecute the delinquent company, in the name of the people of this state. Such corporation, if convicted of having suffered their road to be out of repair, or having placed one or more of the gates thereon in a situation contrary to law, shall be fined in a sum not exceeding two hundred dollars.

Proceedings, if not complied with.

11 W., 597.

§ 48. To each inspector of turnpikes, who shall view a turnpike road upon complaint made to him, shall be allowed the sum of two dollars for each day spent by him in the performance of such duty. If he shall adjudge the road viewed to be out of repair, such fees shall be paid by the company to which the road shall belong; otherwise, they shall be paid by the party making the complaint.

Compensation of turnpike inspectors.

§ 49. Such fees, when payable by the company, shall be paid by the toll-gatherer nearest the road adjudged out of repair, on demand, and out of the tolls received or to be received by him; and may be recovered, with costs, of such toll-gatherer, if he shall neglect or refuse to make such payment.

How paid

TITLE I.
Penalty on
toll-gather-
er.

§ 50. Every toll-gatherer, who, at any turnpike gate, shall unreasonably hinder or delay any traveller or passenger liable to the payment of toll, or shall demand and receive from any person more toll than by law he is authorised to collect, shall, for each offence, forfeit the sum of five dollars to the person aggrieved.

1 R. L., 234, § 9; 21 B., 321; 12 B., 650; 16 J. R., 73.

How col-
lected.

§ 51. Whenever a judgment is obtained against a toll-gatherer for a penalty, or for damages, for acts done or omitted to be done by him in his capacity of toll-gatherer, and goods and chattels of the defendant to satisfy such judgment cannot be found, it shall be satisfied by the corporation whose officer he shall be; and if, on demand, payment be refused by the corporation, the amount thereof may be recovered, with costs, of such corporation.

2 R. L., 226, § 4.

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Commuta-
tion.

§ 52. The president and directors of every turnpike corporation created or to be created, may from time to time commute with any person, whose place of abode shall adjoin or be near to their road, for the toll payable at the nearest gate on each side of such place of abode; but no such commutation shall be for a longer time than one year, and it may be renewed at the end of each period for which it shall be made.

2 R. L., 227, § 5.

Election on
Sunday.

§ 53. Whenever the day of election for directors of any such corporation shall happen on a Sunday, such election shall be held on the day next following.

2 R. L., 227, § 7.

Penalties.

§ 54. Every person who shall,
1. Wilfully break, cut down, deface or injure any mile stone or post, on any turnpike road: or,
2. Wilfully break or throw down any gate or turnpike on such road: or,
3. Dig up or spoil any part of such road, or any thing thereunto belonging: or,
4. Forcibly or fraudulently pass any gate thereon, without having paid the legal toll:

For each offence, shall forfeit to the corporation injured, the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

1 R. L., 234, § 8; 13 How. P. R., 449; 10 J. R., 389; 2 Cal., 97; 21 B., 212; 22 B., 662.

Id.

§ 55. Every person who, to avoid the payment of the legal toll, shall, with his team, carriage or horse, turn out of a turnpike road, or pass any gate thereon, on ground adjacent thereto, and again enter on such road, shall for each offence forfeit the sum of five dollars to the corporation injured.

18 J. R., 56; 27 B., 511; 1 J. C. R., 612.

Hoist gates
to be equal-
ly balanced.

§ 56. No hoist-gate shall be erected on any turnpike, unless it be suspended by a chain and weight equally balanced, so

as to require manual force to raise and lower such gate; and every turnpike company violating this provision, shall forfeit five dollars for every twenty-four hours such gate shall remain erected, to any person who will prosecute for the same, not being a director, stockholder or agent of such company.

Laws of 1819, 308, § 4; Act concerning the Revised Statutes, passed Dec. 10, 1828, § 15.

TITLE II.

OF MONIED CORPORATIONS.

ART. 1. — Regulations to prevent the insolvency of monied corporations, and to secure the rights of their creditors and stockholders.

ART. 2. — Regulations concerning the election of directors of monied corporations.

ART. 3. — Of the construction of this Title.

ARTICLE FIRST.

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REGULATIONS TO PREVENT THE INSOLVENCY OF MONIED CORPORATIONS, AND TO SECURE THE RIGHTS OF THEIR CREDITORS AND STOCKHOLDERS.

SEC. 1. Restrictions upon monied corporations.

2. Unpaid interest not to be calculated as profits.

3. How surplus profits to be ascertained.

4. Amount of losses exceeding undivided profits, to be charged to capital.

5. When loans exceed three times amount of capital, excess to be called in.

6. Stock pledged to be sold and charged as reduction of capital.

7. Conveyances for use of a corporation must be directly to it.

8. Property of corporation not to be conveyed without resolution of board.

9. Conveyances in contemplation of insolvency, void.

10. Penalty on directors for violating preceding sections.

11 to 18. (Repealed.)

19. Corporations to transmit to comptroller statement of their affairs annually.

20 & 21. Matters to be set forth in such statement.

22. Penalty for not transmitting statement.

23. Comptroller to enter statement in a book, for public inspection.

24. Comptroller to report to the legislature.

25. Forms of statements to be prepared by comptroller.

26. Banks not to issue bills for less than one dollar.

27. Penalty on banks for buying their own notes.

28. Officers, &c., of banks not to discount notes offered to bank and rejected.

29. Monied corporations not to commence business until stock paid in.

30. Affidavit of the fact to be made.

31. Charter void, if affidavit be not filed.

§ 1. It shall not be lawful for the directors of any monied corporation,

Restrictions on monied corporations.

1. To make dividends, except from the surplus profits, arising from the business of the corporation:

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock, without the consent of the legislature:

3. To discount or receive any note or other evidence of debt, in payment of any instalment actually called in and required to be paid, or with the intent of providing the means of making such payment:

ARTICLE 2.

4. To receive or discount any note or other evidence of debt, with the intent of enabling any stockholder to withdraw any part of the money paid in by him, on his stock:

5. To apply any portion of the funds of their corporation except surplus profits, directly or indirectly to the purchase of shares of its own stock:

6. To receive any such shares in payment or satisfaction of any debt due to their corporation, except as herein after provided:

7. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own company, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt, issued by such other corporation:

[590] 8. To make any loans or discounts, if the corporation have banking powers, by which the whole amount of the loans and discounts of the company shall be made to exceed three times its capital stock, then paid in, and actually possessed:

9. To make any loans or discounts to the directors of such corporation, or upon paper upon which such directors, or any of them, shall be responsible, to an amount exceeding in the aggregate, one-third of the capital stock of such corporation, actually paid in and possessed; but no securities taken for any such loan or discount, shall be held invalid.

7 N. Y., 340; 3 N. Y., 485; 5 B., 12, 185; 3 B., ch. 237; 6 Pa., 503; 6 H., 567.

Profits, how
calculated.

§ 2. In the calculation of the profits of any monied corporation, previous to a dividend, interest then unpaid, although due, or accrued, on debts owing to the company, shall not be included.

Surplus
profits.

§ 3. In order to ascertain the surplus profits, from which alone a dividend can be made, there shall be charged in the account of profit and loss, and deducted from the actual profits,

1. All the expenses paid or incurred, both ordinary and extraordinary, attending the management of the affairs, and the transaction of the business of the company:

2. The interest paid, or then due, or accrued, on debts owing by the company:

3. All losses sustained by the company; and in the computation of such losses, all debts owing to the company, shall be included, which shall have remained due, without prosecution, and no interest having been paid thereon for more than one year; or on which judgments shall have been recovered, that shall have remained for more than two years unsatisfied, and on which no interest shall have been paid during that period.

Losses, how
to be
charged.

§ 4. When any losses shall be sustained by any such corporation, that shall exceed its undivided profits, then realized and possessed, they shall be charged as a reduction of the capital stock of the company, and no dividends shall thereafter be made on the shares of such stock, until the deficit of

capital so created, shall be made good, either by the recovery of the monies charged as lost, or from the subsequently accruing profits of the company.

7 Pai., 203.

§ 5. If from the occurrence of losses charged, or proper to be charged, as a reduction of its capital stock, the whole amount of the loans and discounts made by any corporation having banking powers, shall exceed three times the amount to which its capital paid in, is, or ought to be reduced, it shall be the duty of the directors of such corporation, to call in and cause to be paid, without delay, such a portion of such loans, as shall reduce their whole amount within the limits before prescribed.

Loans, when to be called in.

§ 6. If any shares of its own capital stock shall be hypothecated or pledged to any monied corporation, and the debt which they shall be intended to secure, shall not be paid when due, it shall be the duty of the directors of the company, within sixty days thereafter, to cause such shares to be sold; and if within that period, such shares shall not be sold, and the debt shall remain unsatisfied, the shares shall be charged at the amount actually paid thereon, as a reduction of the capital stock of the company, and no dividends shall thereafter be made, until the deficit so created, be made good from the subsequently accruing profits of the company.

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Proceedings on stock hypothecated, when debt is not paid.

§ 7. No conveyance, assignment or transfer of any effects, for the use, benefit or security of any such corporation shall be valid in law, unless it be made to the corporation directly and by name; but the provisions of this section shall not be construed, to apply to a conveyance or assignment for the benefit of creditors, in which such corporation shall be included, or to a conveyance or assignment of the effects of a debtor under the laws of this state, or of any other state or country.

Certain conveyances for use of corporation invalid.

4 Du., 21; 5 Ab., 416.

§ 8. No conveyance, assignment or transfer, not authorised by a previous resolution of its board of directors, shall be made by any such corporation of any of its real estate, or of any of its effects, exceeding the value of one thousand dollars; but this section shall not apply to the issuing of promissory notes, or other evidences of debt, by the officers of the company in the transaction of its ordinary business, nor to payments in specie or other current money, or in bank bills, made by such officers; nor shall it be construed to render void any conveyance, assignment or transfer, in the hands of a purchaser for a valuable consideration, and without notice.

Certain conveyances by corporation invalid.

13 N. Y., 118; 12 N. Y., 227; 9 N. Y., 591; 32 B., 313; 17 B., 309; 5 B., 185; 1 D., 523; 1 S. Ch., 209; 1 Du., 129; 7 H., 93; 3 S. S. C., 144; 2 S. S. C., 187.

§ 9. No such conveyance, assignment or transfer, nor any payment made, judgment suffered, lien created, or security

TITLE 2.

given, by any such corporation when insolvent, or in contemplation of insolvency, with the intent of giving a preference to any particular creditor over other creditors of the company, shall be valid in law; and every person receiving, by means of any such conveyance, assignment, transfer, lien, security or payment, any of the effects of the corporation, shall be bound to account therefor to its creditors or stockholders, or their trustees, as the case shall require.

15 N. Y., 9; 9 N. Y., 591; 17 B., 316; 5 B., 15, 185; 1 S. Ch., 209; 4 Ed., 170; 1 Du., 129; 3 S. S. C., 523; 16 How. P. R., 57.

Penalty on director violating preceding sections.

§ 10. Every director who shall violate, or be concerned in violating any provision, in the preceding sections of this Article contained, shall be liable personally to the creditors and stockholders respectively, of the corporation of which he shall be a director, to the full extent of any loss they may respectively sustain from such violation.

§§ 11 to 18 inclusive were repealed by Laws of 1830, ch. 71, but the repeal was declared not to affect corporations then existing.
6 H., 567; 3 W., 130.

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Annual statement to be transmitted to comptroller

§ 19. It shall be the duty of every monied corporation hereafter created, on the first day of January after its incorporation, and annually on the same day thereafter, to make out and transmit to the comptroller, in the form prescribed by him, a full statement of its affairs, verified by the oaths of its president and cashier, or treasurer or secretary.

Contents thereof.

§ 20. Each statement so transmitted shall contain,

1. The amount of the capital stock of the corporation, paid in, or invested according to the provisions of its charter, and the amount of such stock as then possessed:

2. The value of the real estate of the corporation, specifying what portion thereof is occupied by the company as necessary to the transaction of its business:

3. The shares of stock held by such corporation, whether absolutely or as collateral security, specifying each kind and description of stock, and the number and value of the shares of each:

4. The debts owing to the corporation, specifying such as are owing from other monied corporations, the names of such corporations, and the amount due from each; and also specifying the amount secured by bond and mortgage or judgment, the amount which, according to the provisions of this Article, ought to be included in the computation of losses, and the total amount of such debts then collectible:

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5. The amount of debts owing by the corporation, specifying such as are payable on demand, and such as are due to other monied corporations, the names of such corporations, and the amount due to each:

6. The amount of the claims against the corporation not acknowledged by it as debts:

7. The amount for which the corporation is bound as surety, or for which it may become liable on the happening

of contingent events, whether upon policies of insurance or otherwise: and,

a. If the statement be from a corporation having banking powers, the amount of its notes or bills then in circulation, of its loans and discounts, and of specie on hand.

§ 21. Each statement subsequent to the first so transmitted shall also contain,

Further contents of each statement after the first.

1. The amount of the losses of the corporation charged, specifying whether charged on its capital or profits, since its last preceding statement, and of its dividends declared and made during the same period:

2. The average amount for each month, during the preceding year, of the debts due to and from the corporation: and,

3. If the statement be from a corporation having banking powers, the amount on the first day of July of the same year of its notes or bills in circulation, of its loans and discounts, and of its specie on hand.

§ 22. Every corporation that shall neglect to make out and transmit the statement required, for one month beyond the period when by law it ought to be made, may be proceeded against, and dissolved as an insolvent corporation.

Penalty for neglect.

§ 23. It shall be the duty of the comptroller to enter every such statement received by him, in a book to be provided by him for that purpose, and which shall at all times, during office hours, be open to public inspection.

Duty of Comptroller in regard to such statement.

§ 24. If it shall appear to the comptroller from any statements received by him, that the provisions of its charter, or of this Title, have been violated by any corporation, or that there is reason to apprehend, that any corporation is, or will become insolvent, it shall be his duty to report the facts, together with his opinion thereon, without delay, to the legislature.

Id.

§ 25. It shall be the duty of the comptroller, to prepare forms of the statements above prescribed, and to transmit a copy thereof, together with such instructions as he may deem necessary, to every corporation which is or shall be bound, to furnish such statements under the provisions of this Title.

Id.

§ 26. No corporation having banking powers, shall issue for circulation, any bill or promissory note, of a less denomination than one dollar.

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Prohibition on Banks.

See Laws of 1835, ch. 46.

§ 27. No corporation having banking powers, and none of its directors, officers, agents or servants shall, directly or indirectly, purchase, or be interested in the purchase of any promissory note, or other evidence of debt, issued by such corporation, for a less sum than shall appear on the face thereof to be then due; and every person violating the provisions of this section, shall forfeit three times the nominal amount of the note, or other evidence of debt, so purchased.

Id. and on their officers.

§ 28. No president, director, cashier, clerk or agent, of any corporation having banking powers, and no person in any

Id.

TITLE 2.

way interested or concerned, in the management of the affairs of any such corporation, shall discount, or directly or indirectly make any loan, upon any note or other evidence of debt, which he shall know to have been offered for discount to the directors, or any officer of such corporation, and to have been refused; and every person violating the provisions of this section, shall for each offence, forfeit twice the amount of the loan which he shall have made.

1 N. Y., 86.

Affidavits
required
from Corpo-
rations
hereafter
made.

§ 29. No monied corporation, to which a charter shall hereafter be granted, shall commence the business for which it shall be incorporated, until its president and cashier, or treasurer, or secretary, or its two principal officers, by whatever name they may be described, shall have made and subscribed an affidavit, stating that the whole of the capital stock of such corporation, or such portion thereof as, by its charter, shall be required to be paid or secured before the commencement of its operations, has been actually paid, or secured to be paid, according to the provisions of its charter.

How made
and filed.

§ 30. Every such affidavit, if made in a city, shall be made before the mayor or recorder of such city, and if made in a county, before the first judge of the county, or any master in chancery therein, and shall be filed in the clerk's office of the city and county, or of the county in which it shall be taken.

Penalty if
not made.

§ 31. The charter of every such corporation shall be void, if the affidavit above required, shall not be duly made and filed, within one year, from the time such charter shall be granted.

See Laws of 1843, ch. 218; 1835, ch. 307; 1830, ch. 71; ch. 243; 5 Du, 677.

ARTICLE SECOND.

REGULATIONS CONCERNING THE ELECTION OF DIRECTORS OF MONIED CORPORATIONS.

§ 32. Inspectors of elections how chosen.

33. Directors to supply vacancies in office of inspector.

34. Officers of the corporation not to be chosen inspectors.

35. Inspectors to take oath.

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36, 37 & 38. Qualifications of voters.

39. Form of oath to be administered to persons offering to vote.

40. Affidavits to be attached to proxies.

41. Oath to be administered to person offering to vote upon proxy, if challenged.

42. If challenged person refuse to take oath, his vote to be rejected.

43. If election do not take place on day appointed, when to be held.

44. By-laws regulating elections, when to be made and to be published.

45. A register of transfers and a book containing names of stockholders, to be kept, &c.

46. Penalty for refusing to allow stockholders to inspect them.

47. Parties aggrieved by an election, may apply to supreme court for redress.

48, 49 & 50. How supreme court to proceed in such applications.

Inspectors
to be chosen

§ 32. At every election for directors in any monied corporation, three persons shall be chosen by the persons entitled to

vote for directors, as inspectors at the next succeeding election, whose duty it shall be to act as such, and any two of whom shall be competent to act. Each acting inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation for which he is chosen.

§ 33. The directors of the corporation shall supply any vacancy, that may occur by the death or removal from the city or county where the corporation shall be situated, of any such inspector, or by his refusal to serve, or neglect to attend on the day of election. Vacancies how supplied.

§ 34. No person shall be chosen or appointed an inspector of an election of directors in a corporation of which he shall be a director or officer. Disability.

§ 35. Every such inspector, before he shall enter on the duties of his office, shall take and subscribe the following oath, before any officer authorised by law to administer oaths: "I do solemnly swear that I will execute the duties of an inspector of the election now to be held, with strict impartiality, and according to the best of my ability." Oath of Inspector.

§ 36. At every election of directors, the transfer books of the corporation shall be produced, to test the qualifications of the voters; and no persons shall be admitted to vote directly, or by proxy, except those, in whose names the shares of the stock of the corporation, shall stand on such books, and shall have so stood, for at least thirty days previous to the election. Who may vote.

§ 37. No person shall be admitted to vote on any shares of stock, belonging, or hypothecated, to the corporation in which the election is held, nor shall any person be admitted to vote on any shares of stock, which shall then be hypothecated, or pledged, as a collateral security, to any other person or company. To and on what stock.

§ 38. No person shall be admitted to vote on any shares, which shall have been transferred to him, for the sole purpose of enabling him to vote thereon, at the election then to be held; nor upon any shares, which he shall have previously contracted to sell or transfer after the election, upon any condition, agreement or understanding, in relation to his manner of voting at such election. Id.

6 W., 509; 22 W., 591.

§ 39. Every person offering to vote, may be challenged by any other person authorised to vote at the same election; and to every person so challenged, one of the inspectors shall administer the following oath: "You do swear, (or affirm, as the case may be,) that the shares on which you now offer to vote do not belong, and are not hypothecated to the (naming the corporation for which the election is held,) and that they are not hypothecated or pledged to any other corporation or person whatever; that such shares have not been transferred to you for the purpose of enabling you to vote thereon at this election, and that you have not contracted to sell or transfer [597]
Challenge.
Oath.

TITLE 2.

way interested or concerned, in the management of the affairs of any such corporation, shall discount, or directly or indirectly make any loan, upon any note or other evidence of debt, which he shall know to have been offered for discount to the directors, or any officer of such corporation, and to have been refused; and every person violating the provisions of this section, shall for each offence, forfeit twice the amount of the loan which he shall have made.

1 N. Y., 86.

**Affidavits
required
from Corpo-
rations
hereafter
made.**

§ 29. No monied corporation, to which a charter shall hereafter be granted, shall commence the business for which it shall be incorporated, until its president and cashier, or treasurer, or secretary, or its two principal officers, by whatever name they may be described, shall have made and subscribed an affidavit, stating that the whole of the capital stock of such corporation, or such portion thereof as, by its charter, shall be required to be paid or secured before the commencement of its operations, has been actually paid, or secured to be paid, according to the provisions of its charter.

**How made
and filed.**

§ 30. Every such affidavit, if made in a city, shall be made before the mayor or recorder of such city, and if made in a county, before the first judge of the county, or any master in chancery therein, and shall be filed in the clerk's office of the city and county, or of the county in which it shall be taken.

**Penalty if
not made.**

§ 31. The charter of every such corporation shall be void, if the affidavit above required, shall not be duly made and filed, within one year, from the time such charter shall be granted.

See Laws of 1843, ch. 218; 1835, ch. 307; 1830, ch. 71; ch. 243; 5 Du., 677.

ARTICLE SECOND.

REGULATIONS CONCERNING THE ELECTION OF DIRECTORS OF MONIED CORPORATIONS.

Smo. 32. Inspectors of elections how chosen.

33. Directors to supply vacancies in office of inspector.

34. Officers of the corporation not to be chosen inspectors.

35. Inspectors to take oath.

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36, 37 & 38. Qualifications of voters.

39. Form of oath to be administered to persons offering to vote.

40. Affidavits to be attached to proxies.

41. Oath to be administered to person offering to vote upon proxy, if challenged.

42. If challenged person refuse to take oath, his vote to be rejected.

43. If election do not take place on day appointed, when to be held.

44. By-laws regulating elections, when to be made and to be published.

45. A register of transfers and a book containing names of stockholders, to be kept, &c.

46. Penalty for refusing to allow stockholders to inspect them.

47. Parties aggrieved by an election, may apply to supreme court for redress.

48, 49 & 50. How supreme court to proceed in such applications.

**Inspectors
to be chosen**

§ 32. At every election for directors in any monied corporation, three persons shall be chosen by the persons entitled to

vote for directors, as inspectors at the next succeeding election, whose duty it shall be to act as such, and any two of whom shall be competent to act. Each acting inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation for which he is chosen.

§ 33. The directors of the corporation shall supply any vacancy, that may occur by the death or removal from the city or county where the corporation shall be situated, of any such inspector, or by his refusal to serve, or neglect to attend on the day of election. Vacancies how supplied.

§ 34. No person shall be chosen or appointed an inspector of an election of directors in a corporation of which he shall be a director or officer. Disability.

§ 35. Every such inspector, before he shall enter on the duties of his office, shall take and subscribe the following oath, before any officer authorised by law to administer oaths: "I do solemnly swear that I will execute the duties of an inspector of the election now to be held, with strict impartiality, and according to the best of my ability." Oath of Inspector.

§ 36. At every election of directors, the transfer books of the corporation shall be produced, to test the qualifications of the voters; and no persons shall be admitted to vote directly, or by proxy, except those, in whose names the shares of the stock of the corporation, shall stand on such books, and shall have so stood, for at least thirty days previous to the election. Who may vote.

§ 37. No person shall be admitted to vote on any shares of stock, belonging, or hypothecated, to the corporation in which the election is held, nor shall any person be admitted to vote on any shares of stock, which shall then be hypothecated, or pledged, as a collateral security, to any other person or company. Ib. and on what stock.

§ 38. No person shall be admitted to vote on any shares, ^{Ib.} which shall have been transferred to him, for the sole purpose of enabling him to vote thereon, at the election then to be held; nor upon any shares, which he shall have previously contracted to sell or transfer after the election, upon any condition, agreement or understanding, in relation to his manner of voting at such election.

6 W., 509; 22 W., 591.

§ 39. Every person offering to vote, may be challenged by any other person authorised to vote at the same election; and to every person so challenged, one of the inspectors shall administer the following oath: "You do swear, (or affirm, as the case may be,) that the shares on which you now offer to vote do not belong, and are not hypothecated to the (naming the corporation for which the election is held,) and that they are not hypothecated or pledged to any other corporation or person whatever; that such shares have not been transferred to you for the purpose of enabling you to vote thereon at this election, and that you have not contracted to sell or transfer [597] Challenge. Oath.

TITLE 1

them, upon any condition, agreement or understanding, in relation to your manner of voting at this election."

See Laws of 1861, ch. 321.

Persons
voting on
proxies.

§ 40. No person shall be permitted to vote upon the proxy of a stockholder, unless he shall produce, annexed to his proxy, an affidavit of such stockholder, stating the same facts to which the oath of such stockholder might have been required, upon a challenge, had he offered to vote in person, on the shares mentioned in the proxy.

19 W., 636.

Their oath
if chal-
lenged.

§ 41. If any person offering to vote upon a proxy, shall be challenged by an elector, he shall be required to take the following oath, to be administered to him by one of the inspectors: "You do swear, (or affirm,) that the facts stated in the affidavit annexed to the proxy, upon which you now offer to vote, are true according to your belief, and that you have made no contract or agreement whatever, for the purchase or transfer of the shares, or any portion of the shares, mentioned in such proxy."

Proceed-
ings on
challenge.

§ 42. If any person duly challenged, shall refuse to take the proper oath, his vote shall be rejected, and shall not be afterwards received at the same election: if he shall take the oath, his vote shall be received.

Proceed-
ings if elec-
tion be not
held.

§ 43. If an election for directors in any such corporation, shall not be held on the day appointed by law, it shall be the duty of the directors to notify, and cause such election to be held, within sixty days after the day so appointed; and on the day so notified, no persons shall be admitted to vote, except those who would have been entitled, had the election taken place on the day when, by law, it ought to have been held.

Certain
by-laws in-
valid.

§ 44. No by-law of any such corporation, regulating the election of its directors, shall be valid, unless it shall be made at least sixty days before the day appointed by law for the election to be held, and shall have been published for at least two weeks in succession, immediately following its enactment, in some newspaper in the city or county where the corporation is situated.

Transfer
book of
stock.

[§ 45]

§ 45. Every such corporation shall keep a book, in which the transfer of shares of its stock shall be registered; and another book, containing the names of its stockholders; which books shall at all times during the usual hours of transacting business, for thirty days previous to an election of directors, be open to the examination of the stockholders.

Penalty for
refusing to
exhibit.

§ 46. If any officer having charge of such books, shall, upon the demand of a stockholder, refuse or neglect to exhibit and submit them to examination, he shall for each offence forfeit the sum of two hundred and fifty dollars.

Remedy of
persons ag-
grieved by
election.

§ 47. If any person shall conceive himself aggrieved by an election, or any proceeding concerning an election of directors or officers in any such corporation, he may apply to the

supreme court for redress, giving a reasonable notice of his intended application, to the party to be affected thereby.

22 W., 593; 6 H., 370.

§ 48. It shall be the duty of the supreme court, upon such application, to proceed forthwith in a summary way, to hear the proofs and allegations of the parties, or otherwise to inquire into the causes of complaint, and thereupon to make such order, and grant such relief, as the circumstances and justice of the case shall seem to require. If the election complained of shall be set aside, the supreme court may order a new election, at such time and place as they shall appoint.

Proceed-
ings.

22 W., 591.

§ 49. The supreme court, if they cannot otherwise arrive at a satisfactory result, may order an issue between the parties, to be made up in such manner and form, and to be tried in such court, as they shall select; or may permit or direct the attorney-general to file an information, in the nature of a *quo warranto*, if the case be one in which that proceeding would be competent and effectual.

§ 50. If any such issue shall be ordered, or information permitted or directed to be filed, it shall be the duty of the supreme court to make such further orders in relation to the time and mode of pleading, the examination of witnesses or the parties, the production of books and papers, and the time and place of trial or hearing, as shall in their judgment be effectual for expediting the proceedings, saving expense to the parties, and causing a final determination to be had, with as little delay, as the nature of the controversy will permit.

See Laws of 1847, ch. 160.

ARTICLE THIRD.

OF THE CONSTRUCTION OF THIS TITLE.

SEC. 51. Meaning of the term "monied corporation."

52. To what corporations this Title to apply.

53. Meaning of term "directors."

54. Meaning of term "effects."

55. Meaning of the term "evidence of debt."

§ 51. The term "monied corporation," as used in this Title, shall be construed to mean every corporation having banking powers, or having the power to make loans upon pledges or deposits, or authorised by law to make insurances.

"Monied
Corporation"
defined.

16 N. Y., 424; 9 N. Y., 591; 7 N. Y., 328; 4 N. Y., 444.

§ 52. The provisions of this Title shall not apply to any monied corporation existing on the first day of January, one thousand eight hundred and twenty-eight; but they shall be construed to apply to every monied corporation created, or whose charter shall be renewed or extended, after that time, unless such corporation shall be expressly exempted from the provisions of this Title, in the act creating, renewing, or extending such corporation.

[500]
This title to
apply to fu-
ture corpo-
rations
only.

Act concerning the Revised Statutes, passed December 10, 1828, § 15.

TITLE 4.

[661]

in law, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the corporation, collect and pay the outstanding debts, and divide among the stockholders the monies and other property that shall remain, after the payment of debts and necessary expenses.

1 R. L., 248, § 1; 31 B., 411, 645; 30 B., 587; 7 J. C. R., 128; 10 W., 454; 5 D., 574.

Their powers.

§ 10. The persons so constituted trustees, shall have authority to sue for and recover, the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands.

1 R. L., 249, § 2; 31 B., 645; see Laws of 1832, ch. 295.

TITLE IV.

SPECIAL PROVISIONS RELATING TO CERTAIN CORPORATIONS.*

Sac. 1. Certain books of incorporated companies to be kept open.

2. Prohibitions and restrictions upon directors, officers, &c.

3. Debts of corporations not to exceed certain amount.

4. Certain transfers of property prohibited.

5. Supreme court to correct illegal elections.

6. By-laws regulating elections; evidence of right to vote.

7. Oath to be taken by inspectors of elections.

8. On failure to hold elections, new day to be appointed.

9. Penalty for purchasing notes at a discount.

10. Officers not to loan upon notes offered for discount.

11. Extent and application of the provisions of this Title.

Certain books to be open at certain times.

§ 1. The book or books of any incorporated company in this state, in which the transfer of stock in any such company shall be registered, and the books containing the names of the stockholders in any such company, shall, at all reasonable times during the usual hours of transacting business, be open to the examination of every stockholder of such company, for thirty days previous to any election of directors; and if any officer having charge of such books, shall, upon demand by any stockholder as aforesaid, refuse or neglect to exhibit such books, or submit them to examination as aforesaid, he shall for every such offence, forfeit the sum of two hundred and fifty dollars, the one moiety thereof to the use of the people of this state, and the other moiety to him who will sue for the same, to be recovered by action of debt in any court of record, together with the costs of such suit.

Laws of 1825, 448, § 1; 5 N. Y., 566; 10 B., 217; 19 W., 45; 3 W., 588.

Dividends from surplus profits only.

§ 2. It shall not be lawful for the directors or managers of any incorporated company in this state to make dividends, excepting from the surplus profits arising from the business

* This Title inserted pursuant to the "act concerning the Revised Statutes," passed December 10, 1898, § 15.

of such corporation ; and it shall not be lawful for the directors of any such company to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of such company, or to reduce the said capital stock, without the consent of the legislature ; and it shall not be lawful for the directors of such company to discount or receive any note, or other evidence of debt, in payment of any instalment actually called in and required to be paid, or any part thereof, due or to become due on any stock in the said company ; nor shall it be lawful for such directors to receive or discount any note, or other evidence of debt, with the intent of enabling any stockholder in such company to withdraw any part of the money paid in by him on his stock ; and in case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the said directors at the time, or were not present when the same did happen, shall in their individual and private capacities, jointly and severally be liable to the said corporation, and to the creditors thereof in the event of its dissolution, to the full amount of the capital stock of the said company so divided, withdrawn, paid out, or reduced, and to the full amount of the notes or other evidences of debt so taken or discounted in payment of any stock, and to the full amount of any notes or other evidences of debt so discounted with the intent aforesaid, with legal interest on the said respective sums, from the time such liability accrued ; and no statute of limitations shall be a bar to any suit at law or in equity, against such directors for any sums for which they are made liable by this section : *Provided*, That this section shall not be construed to prevent a division and distribution of the capital stock of such company which shall remain after the payment of all its debts, upon the dissolution of such company, or the expiration of its charter.

Laws of 1825, 448, § 2 ; 8 W., 645 ; 10 B., 260.

§ 3. The total amount of the debts which any incorporated company shall at any time owe, whether for deposits, or by bond, bill, note, or other contract, over and above the actual deposits with the said company, shall not at any time exceed three times the amount of the capital stock actually paid in ; and in case of any excess the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the said directors at the time, and except those who were not present when the same did happen, shall in their individual and private capacities, jointly and severally, be liable for such excess to the said corporation, and in the event of its dissolution, to any of the creditors thereof, to the full amount of such excess, with legal interest from the time such liability accrued ; and no statute of limitations shall be a bar

TITLE 4.
Capital not to be reduced.

(602)
Notes for instalments on stock, not to be discounted.

Nor notes to withdraw in instalments paid.
Liability of directors for violating these provisions.

Extent of liability.

Not barred by statute of limitations.

Proviso.

Amount of debts.

Liability of directors for excess.

Not barred

TITLE 4.
by statute of
limitations.

[603]
Certain
transfers of
property
prohibited.

Corpora-
tions deem-
ed dissolved
in certain
cases.

Powers of
Supreme
Court re-
specting
elections.

Proceed-
ings.

to any suit at law or in equity, against such directors for any sums of money for which they are made liable by this section.

Laws of 1825, 448, § 3; 4 B., 388.

§ 4. Whenever any incorporated company shall have refused the payment of any of its notes, or other evidences of debt, in specie, or lawful money of the United States, it shall not be lawful for such company, or any of its officers, to assign or transfer any of the property or choses in action of such company, to any officer or stockholder of such company, directly or indirectly for the payment of any debt; and it shall not be lawful to make any transfer or assignment in contemplation of the insolvency of such company, to any person or persons whatever; and every such transfer and assignment to such officer, stockholder or other person, or in trust for them or their benefit, shall be utterly void; and whenever any incorporated company shall have remained insolvent for one whole year, or for one year shall have neglected or refused to redeem its notes or other evidences of debt, in specie or other lawful money of the United States, or shall for one year have suspended the ordinary business of such incorporation, such company shall thereupon be deemed and adjudged to have surrendered the rights, privileges and franchises, granted by any act of incorporation, and shall be deemed to be dissolved.

Laws of 1825, 450, § 6; 3 B., 121; 11 B., 265; 21 N. Y., 406; 30 B., 646; 15 B., 66; 5 H., 221.

§ 5. It shall be the duty of the supreme court, upon the application of any person or persons or body corporate, that may be aggrieved by, or may complain of, any election, or any proceeding, act or matter, in or touching the same, (reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application,) to proceed forthwith and in a summary way, to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and thereupon to establish the election so complained of, or to order a new election, or make such order and give such relief in the premises, as right and justice may appear to the said supreme court to require: *Provided*, That the said supreme court may, if the case shall appear to require it, either order an issue or issues to be made up in such manner and form as the supreme court may direct, in order to try the respective rights of the parties who may claim the same, to the office or offices or franchise in question; or may give leave to exhibit, or direct the attorney-general to exhibit, one or more information or informations in the nature of a quo warranto in the premises.

Laws of 1825, 451, § 9, amended pursuant to the "act concerning the Revised Statutes," passed December 10, 1828, § 15; 19 W., 139; 11 Pal., 124.

§ 6. No by-law of the directors and managers of any incorporated company, regulating the election of directors or officers of such company, shall be valid, unless the same shall have been published for at least two weeks in some newspaper in the county where such election shall be held, at least thirty days before such election; and in all cases where the right of voting upon any share or shares of the stock of any incorporated company of this state, shall be questioned, it shall be the duty of the inspectors of the elections, to require the transfer books of said company, as evidence of stock held in the said company; and all such shares as may appear standing thereon in the name of any person or persons, shall be voted on by such person or persons, directly by themselves, or by proxy, subject to the provisions of the act of incorporation.

TITLE 4.
Certain by-laws to be published.

Evidence of right to vote.

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Laws of 1825, 451, § 11; 5 N. Y., 566; 19 W., 45, 139.

§ 7. The inspectors who may be appointed to conduct any election of directors or any other officer of any incorporated company of this state, shall be required, before entering on the duties of their appointment, to take or subscribe the following oath or affirmation: "I, A. B., do solemnly swear, [or affirm, as the case may be,] that I will execute the duties of an inspector for the election now to be held, with strict impartiality, and according to the best of my ability."

Oath of inspectors of elections.

Laws of 1825, 451, § 12; 19 W., 135, 636.

§ 8. If at any time hereafter, the election for directors of any bank or other incorporated company of this state, shall not be duly held on the day designated and appointed by the act incorporating such bank or other incorporated company, it shall be the duty of the president and directors of such bank or other incorporated company, to notify and cause an election for directors to be held within sixty days immediately thereafter; and in all cases, no share or shares shall be voted upon, except by such person or persons who may have appeared on the transfer books of said company to have had the right to vote thereon, on the day when, by the act of incorporation of such company, the election ought to have been held; which said right so to vote shall be exercised by the persons so appearing as aforesaid upon the transfer books of such company, on any day when such election may be held.

On failure of election another day to be appointed.

Who entitled to vote on such subsequent day.

Laws of 1825, 450, § 13; 11 N. Y., 152; 4 Pal., 247.

§ 9. It shall not be lawful in any company incorporated for banking purposes, its officers, agents or servants, or any of them, directly or indirectly to purchase or be interested in the purchase of any promissory note, or other evidence of debt, issued by any such company, at a less sum than appears by the face thereof to be due and payable; and any person offending against the provisions of this section, shall forfeit and pay three times the nominal amount of the note or other evidence of debt so purchased, to be recovered, with costs of

Corporation and its officers, &c. not to purchase its notes at a discount.

Penalty.

TITLE 1.

suit, by any person who will sue for the same, in any court of competent jurisdiction.

Laws of 1825, 451, § 15.

Officers, &c.
of corporations
not to
loan upon
certain
notes.

Notes, &c.,
void.
[665]

Further
penalty.

§ 10. It shall not be lawful for any person being president, director, cashier, clerk, agent, or any way interested or concerned in the management of the concerns of any such company, to discount, or directly or indirectly make any loan upon any note, bill or other evidence of debt, which shall have been offered to such directors for discount; and every note, bill, or other evidence of debt so discounted, or upon which any loan shall have been made by any of the persons aforesaid, knowing that such note had been so offered and refused, shall be utterly void; and the person offending herein, knowing that such note had been so offered and refused, by making any discount or loan, shall, for every such offence, forfeit and pay to any person who will sue for the same, twice the amount of any such discount or loan, to be recovered by action of debt, with costs of suit in any court of competent jurisdiction.

Laws of 1825, 452, § 16; 1 N. Y., 86.

§ 11. The provisions of this Title shall not apply to any incorporated library, or religious society; nor to any monied corporation which shall have been or shall be created, or whose charter shall be renewed or extended, after the first day of January, one thousand eight hundred and twenty-eight, and which shall be subject to the provisions of the second Title of this Chapter.

Eighteenth subdivision of § 15, of the "act concerning the Revised Statutes," passed December 10, 1828; 5 H., 221; see Laws of 1829, ch. 94; 1838, ch. 260; 1840, ch. 363; 1841, ch. 319; 56; 1839, ch. 355.

CHAP. XIX.

Of the Computation of Time, of Weights and Measures, and the Money of Account.

[Took effect January 1, 1830.]

TITLE 1. — Of the computation of time.

TITLE 2. — Of weights and measures.

TITLE 3. — Of the money of account.

TITLE I.

OF THE COMPUTATION OF TIME.

- Sec. 1. Time to be computed according to Gregorian or new style.
 2. What to be deemed leap years; such years to consist of 366 days.
 3. Year, &c., defined; added day of leap year how to be computed.
 4. Term "month" to mean calendar month, unless otherwise expressed.

New style
to be con-
tinued.

§ 1. Time shall continue to be computed in this state, according to the Gregorian or new style; and the first day of

TITLE I.

January, in every year, which has happened, according to such style, since the year one thousand seven hundred and fifty-two, and which shall hereafter happen, shall be reckoned to be the first day of the year.

§ 2. For the purpose of preserving the method of reckoning and computing the days of the year, in the same regular course, as near as may be, in all future times, the several years one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other future hundredth year, of which the year two thousand shall be the first, except only every fourth hundredth year, shall not be taken to be bissextile or leap years, but shall be taken to be common years, consisting of three hundred and sixty-five days; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year, from the year two thousand inclusive, and also every fourth year, except as first above mentioned, which, by usage in this state, is considered to be a bissextile or leap year, shall be taken to be bissextile or leap years, consisting of three hundred and sixty-six days.

§ 3. Whenever the term "year," or "years," is or shall be used in any statute, deed, verbal or written contract, or any public or private instrument whatever, the year intended shall be taken to consist of three hundred and sixty-five days; a half year of one hundred and eighty-two days; and a quarter of a year of ninety-one days; and the added day of a leap year, and the day immediately preceding, if they shall occur in any period so to be computed, shall be reckoned together as one day.

§ 4. Whenever the term "month," or "months," is or shall be used in any statute, act, deed, verbal or written contract, or any public or private instrument whatever, it shall be construed to mean a calendar, and not a lunar month; unless otherwise expressed.

TITLE II.

OF WEIGHTS AND MEASURES.

[This title was repealed by "An act in relation to weights and measures," passed April 11, 1861—Laws of 1861, ch. 184, and a new enactment made in its place, but such new enactment was not made a part of the Revised Statutes, but standing as a general statute, will be found in a subsequent volume.]

TITLE III.

OF THE MONEY OF ACCOUNT.

Sec. 1. Public accounts to be kept in money of account of United States.

2. Judgments, &c., to be in dollars and cents; omission of fractions not erroneous.

§ 1. All accounts and other computations of money in the treasury and other public offices, whether state or local, and all accounts arising from proceedings in courts of justice, shall be kept and made out, in the money of account of the United States, that is to say: in dollars or units, dimes or

CHAP. 20.

tenths, cents or hundredths, mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

1 R. L., 168.

Sums in
judgment
and decrees.

§ 2. In all judgments or decrees rendered by any court of justice, for any debt, damages or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting lesser fractions; and no judgment, or other proceeding, shall be considered erroneous for such omissions.

CHAP. XX.

Of the Internal Police of this State.

(Took effect January 1, 1820.)

- TITLE 1.**— Of the relief and support of indigent persons.
- TITLE 2.**— Of beggars and vagrants.
- TITLE 3.**— Of the safe keeping and care of lunatics.
- TITLE 4.**— Of the care of habitual drunkards.
- TITLE 5.**— Of disorderly persons.
- TITLE 6.**— Of the support of bastards.
- TITLE 7.**— Of the importation into this state of persons held in slavery, of their exportation, of their services, and prohibiting their sale.
- TITLE 8.**— Of the prevention and punishment of immorality, and disorderly practices.
- TITLE 9.**— Of excise, and the regulation of taverns and groceries.
- TITLE 10.**— Of the navigation of rivers and lakes, and the obstruction of certain waters.
- TITLE 11.**— Of fisheries generally, and particularly in Hudson river, and at and below the city of New-York.
- TITLE 12.**— Of wrecks.
- TITLE 13.**— Of the law of the road, and the regulation of public stages.
- TITLE 14.**— Of the firing of woods.
- TITLE 15.**— Of the embezzlement of timber floating.
- TITLE 16.**— Of the preservation of deer and certain game and animals.
- TITLE 17.**— Of dogs.
- TITLE 18.**— Of the destruction of wolves, and other noxious animals.
- TITLE 19.**— Of brokerage, stock-jobbing, and pawn-brokers.
- TITLE 20.**— Of unauthorised banking, and the circulation of certain notes or evidences of debt issued by banks.
- TITLE 21.**— Of insurances on property in this state made in foreign countries, and by individuals and associations unauthorised by law.

TITLE I.***TITLE I.
[613]****OF THE RELIEF AND SUPPORT OF INDIGENT PERSONS.**

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* See Act amendatory, Laws of 1842, ch. 214.

TITLE I.

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Paupers to be supported by relatives.

§ 1. The father, mother, and children, who are of sufficient ability, of any poor person who is blind, old, lame, impotent or decrepit, so as to be unable by work to maintain himself, shall, at their own charge, relieve and maintain such poor person, in such manner as shall be approved by the overseers of the poor of the town where such poor person may be.

1 R. L., 288, § 21; Laws of 1821, 114, § 4; 7 How. P. R., 154, 166; 7 Cow., 235; 18 B., 100; 17 B., 410.

How compelled.

§ 2. Upon any failure of any such relative so to relieve and maintain any such poor person, it shall be the duty of the overseers of the poor of the town where such poor person may be, to apply to the court of general sessions of the peace of the county where such relative may dwell, for an order to compel such relief; of which application, at least fourteen days' notice, in writing, shall be given, by serving the same personally, or by leaving the same at the last place of dwelling of the individual to whom the same may be directed, in case of his absence therefrom, with some person of mature age.

Powers of court.

§ 3. The court to which the said application may be made, shall proceed in a summary way to hear the allegations and proofs of the parties, and shall order such of the relatives aforesaid of such poor person as appear to be of sufficient ability, to relieve and maintain such person, and shall therein specify the sum which will be sufficient for the support of such poor person, to be paid weekly. And the said court shall therein direct the relative or relatives, who shall perform that duty, in the following order: The father shall be first required to maintain such poor person; if there be none, or he be not of sufficient ability, then the children of such poor person; if there be none, or they be not of sufficient ability, then the mother.

17 B., 414.

Proportions.

§ 4. If it shall appear that any such relative is unable wholly to maintain such poor person, but is able to contribute towards his support, the court may, in its discretion, direct two or more relatives, of different degrees, to maintain such poor person, and shall prescribe the proportion which each shall contribute for that purpose; and if it shall appear that the relatives liable as aforesaid, are not of sufficient ability

wholly to maintain such poor person, but are able to contribute something, the court shall direct the sum, in proportion to their ability, which such relatives shall pay weekly for that purpose.

§ 5. Such order may specify the time during which the relatives aforesaid shall maintain such poor person, or during which any of the said sums so directed by the court shall be paid, or it may be indefinite, and until the further order of the court. The court may, from time to time, vary such order, whenever circumstances shall require it, on the application, either of any relative affected thereby, or of any overseers of the poor of the town, upon fourteen days' notice being given.

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Order of
court.

§ 6. The costs and expenses of such application, shall be ascertained by the court, and paid by the relatives against whom any order may be made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by process of attachment.

How en-
forced;
costs.

§ 7. If any relative who shall have been required, by such order, to relieve or maintain any poor person, shall neglect to do so, in such manner as shall be approved by the overseers of the poor of the town where such poor person may be, and shall neglect to pay to such overseers weekly the sum prescribed by the court for the support of such poor person, the said overseers may maintain an action, as for monies had and received, against such relative, and shall recover therein the sum so prescribed by the said court for every week the said order shall have been disobeyed, up to the time of such recovery, with costs of suit, for the use of the poor.

Suits by
overseers.

1 R. L., 288, § 21; Laws of 1821, 114, § 4; 18 B., 100; 17 B., 410.

§ 8. Whenever the father, or mother being a widow or living separate from her husband, shall abscond from their children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the public for their support, the overseers of the poor of the town where such wife or children may be, may apply to any two justices of the peace of any county in which any estate, real or personal, of the said father, mother, or husband, may be situated, for a warrant to seize the same. Upon due proof of the facts aforesaid, the said justices shall issue their warrant, authorising the said overseers to take and seize the goods, chattels, effects, things in action, and the lands and tenements of the person so absconding.

Father, &c.,
absconding.

1 R. L., 238, § 22; 23 B., 236; 21 W., 182.

§ 9. By virtue of such warrant, the said overseers may seize and take the said property, wherever the same may be found, in the same county; and shall be vested with all the right and title to the said property, which the person so absconding had, at the time of his or her departure. All sales and transfers of any personal property left in the county from which such

Effect of
warrant.

TITLE I.

Duty of
overseers.

[§16]

person absconded, made by him, after the issuing of such warrant, whether in payment of an antecedent debt, or for a new consideration, shall be absolutely void. The overseers shall immediately make an inventory of the property so seized by them, and return the same, together with their proceedings, to the next court of general sessions of the peace of the county where such overseers reside, there to be filed.

Proceed-
ings by gen-
eral ses-
sions.

§ 10. The said court, upon inquiring into the facts and circumstances of the case, may confirm the said warrant and seizure, or may discharge the same; and if the same be confirmed, shall, from time to time, direct what part of the personal property shall be sold, and how much of the proceeds of such sale, and of the rents and profits of the real estate, if any, shall be applied towards the maintenance of the children or wife of the person so absconding.

1 R. L., 288, § 22; 23 B., 236.

Warrant
when jus-
tice may
discharge.

§ 11. If the party against whom such warrant shall issue, return and support the wife or children so abandoned, or give security satisfactory to any two justices of the town, to the overseers of the poor of the town, that the wife or children so abandoned shall not become, or thereafter be, chargeable to the town or county, then such warrant shall be discharged, by an order of such justices, and the property taken by virtue thereof, shall be restored to such party.

Powers and
duties of
overseers.

§ 12. The overseers shall sell at public vendue, the property so ordered to be sold, and shall receive the rents and profits of the real estate of the person so absconding, and in those towns which are required to support their own poor, the overseers shall apply the same to the maintaining, bringing up and providing for the wife, child, or children so left and abandoned, and for that purpose shall draw on the county treasurer for the said proceeds, as herein after directed. They shall account to the court of general sessions of the peace, for all monies so received by them, and for the application thereof, from time to time, and may be compelled, by the said court, to render such account at any time.

Ib. of coun-
ty superin-
tendents.

§ 13. In those counties where all the poor are a charge upon the county, the superintendents of the poor shall be vested with the same powers, rights and authority, as are herein before given to the overseers of the poor of any town, in respect to compelling relatives to maintain paupers, and in respect to the seizure of the property of any parent absconding and abandoning his or her family, and shall be entitled to the like actions and remedies in their names, and shall perform the duties herein before required of overseers, and subject to the same obligations and control.

Paupers to
be relieved.

§ 14. Every poor person who is blind, lame old, sick, impotent, or decrepit, or in any other way disabled, or enfeebled, so as to be unable by his work to maintain himself, shall be

maintained by the county or town in which he may be, according to the following provisions.

§ W., 193.

§ 15. It shall be the duty of the boards of supervisors within the several counties of this state, except the county of New York, within one year after this title becomes a law, to appoint not less than three, or more than five, discreet freeholders of their respective counties, to be superintendents of the poor within such county, who shall hold their offices for one year, and until others shall be appointed in their places, and who shall take the oath prescribed in the constitution. A majority of the persons so appointed shall be at all times competent to transact business, and to execute any powers vested in the board of superintendents. They shall be allowed such sum for their actual attendance and services, as the board of supervisors of their county shall deem reasonable.*

County superintendents to be appointed.

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Laws of 1824, 382; see Laws of 1835, ch. 299; 1832, ch. 292; 1847, ch. 498; 1854, ch. 188.

§ 16. They shall be a corporation by the name of the Superintendents of the Poor of the county for which they shall be appointed, and shall possess the usual powers of a corporation for public purposes; they shall meet as often as the supervisors of the county shall direct, at the county poor-house, if there be one, or at the place of holding courts in their county, or at one of the places of holding courts, if there be more than one, and at such other times and places as they shall think expedient: they shall have a general superintendence and care of the county poor who may be in their respective counties; and shall have power, and it shall be their duty,

To be a corporation. Powers and duties.

1. To provide suitable places for the keeping of such poor, when so directed by the supervisors of any county, where houses for that purpose have not been erected by the county; and for that purpose, to rent a tenement or tenements, and land not exceeding fifty acres, and to cause the poor of the county to be maintained in such places:

To provide places, &c.

2. To establish and ordain prudential rules, regulations and by-laws, for the government and good order of such places so provided, and of the county poor-houses, and for the employment, relief, management and government of the persons therein placed; but such rules and regulations shall not be valid, until sanctioned by a majority of the judges of the county courts of such county in writing:

To make rules, &c.

3. To employ suitable persons to be keepers of such houses or places, and all necessary officers and servants, and to vest such powers in them for the government of such houses as shall be necessary, reserving to the paupers who may be placed under the care of such keepers, the right of appeal to the superintendents:

To employ keepers, &c.

* By Laws of 1853, ch. 80, it is enacted that no supervisor or county treasurer shall be appointed superintendent, nor any superintendent be appointed keeper of the poor house.

ARTICLE 1.
To purchase material, &c.

4. In the counties where a poor-house is erected, or other place provided for the poor, to purchase the furniture, implements, and materials that shall be necessary from time to time for the maintenance of the poor therein, and their employment in labor or manufactures, and to sell and dispose of the proceeds of such labor as they shall deem expedient:

Allowance for bringing paupers, &c.
[§18]

5. To prescribe the rate of allowance to be made to any persons for bringing paupers to the county poor-house or place provided for the poor, subject to such alterations as the board of supervisors may, by a general resolution, make:

Payment of such allowance.

6. To authorize the keepers of such houses or places so provided, to certify the amount due to any person for bringing such paupers; which amount shall be paid by the county treasurer, on the production of such certificate, countersigned and allowed by any two superintendents:

To decide disputes respecting settlements.

7. To decide any dispute that shall arise concerning the settlement of any poor person, summarily, upon a hearing of the parties; and for that purpose, to issue subpoenas to compel the attendance of witnesses, and to administer oaths to them in the same manner, with the like power to enforce such process as is given to justices of the peace in any matter cognizable by them: their decisions shall be filed in the office of the county clerk within thirty days after they are made, and shall be conclusive and final upon all parties interested:

To direct and commence suits.

8. To direct the commencement of suits by any overseers of the poor who shall be entitled to prosecute for any penalties, or upon any recognizances, bonds, or securities taken for the indemnity of any town or of the county; and in case of the neglect of any such overseer, to commence and conduct such suits, without the authority of such overseers, in their names:

To draw on county treasurer.

9. To draw from time to time on the county treasurer for all necessary expenses incurred in the discharge of their duties, which drafts shall be paid by him out of the monies placed in his hands for the support of the poor:

To account.

10. To render to the board of supervisors of their county, at their annual meeting, an account of all monies received and expended by them, or under their direction, and of all their proceedings:

To pay over monies.

11. To pay over all monies remaining in their hands, within fifteen days after the expiration of their office, to the county treasurer, or to their successors.

Laws of 1824, 382; 11 B., 119; 8 Pal., 409; Laws of 1831, ch. 277; see Laws of 1832, ch. 26.

County poor houses.

§ 17. The board of supervisors of any county in this state, in which a county poor-house is not already erected, may, at any annual or special meeting thereof, determine to erect such house for the reception of the poor of their county; and upon filing such determination with the clerk of the county, they may direct the superintendents of the poor of such county to purchase one or more tracts of land not exceeding two hun-

dred acres, and to erect thereon one or more suitable buildings for the purpose aforesaid. To defray the expenses of such purchase and buildings, the said board may raise by tax on the real and personal estate of the inhabitants of the same county, a sum not exceeding seven thousand dollars, by such instalments and at such times as they may judge expedient. The said tax shall be raised, assessed and collected in the same manner as the other county charges, and shall be paid by the county treasurer to the superintendents of the poor of the county, to be applied in defraying the expenses aforesaid.

Laws of 1824, 382; 1825, 3; 22 B., 248.

§ 18. The superintendents of county poor-houses, that have been erected, or shall be erected pursuant to any law, shall be superintendents of the poor of their counties respectively, and shall possess all the powers and be subject to all the regulations herein before specified in relation to such superintendents.

§ 19. All monies which shall be received by the commissioners of excise in any town or city, of any county in which the supervisors shall have determined to abolish the distinction between town poor and county poor, shall be by them paid over to the county treasurer, within thirty days after the receipt thereof; and they shall at the same time deliver a certified copy of the resolutions of the board of excise, by which the sum to be paid for licenses by grocers, tavern-keepers or others, shall be fixed. Any commissioner of excise neglecting the said duty, or any part thereof, shall forfeit fifty dollars, to be recovered by and in the name of the superintendents of the poor of the county; and shall also be liable to an action by and in the name of the county treasurer, for all monies received by them, with the interest thereon from the time the same should have been paid over.

§ 20. All monies which shall be collected by overseers of the poor of any town in a county where the poor are all a county charge, from the relatives of any poor person bound to contribute to his support; or from the sale of any personal property, or the rents and profits of the real property, of any person who shall abscond, leaving a wife or children; or received for any fines, penalties or forfeitures, which by law are directed to be applied to the support of the poor; or collected on any bond or other security that shall be given for the benefit or indemnity of any town, or of the overseers or inhabitants of such town; and all other monies which shall be received by such overseers in their official capacity, shall be by them paid over within thirty days after the receipt of the same, to the county treasurer, for the benefit of the poor; and if not so paid, the same may be recovered in an action to be brought by and in the name of the county treasurer, with interest, at the rate of ten dollars on the hundred, for a year, from the time the same should have been paid.

16 How. P. R., 260.

ARTICLE 1.

Expenses limited.

(§19)

Superintendents of county poor houses.

Excise money—when to be paid to county treasurer.

Penalty.

Also all other monies received by overseers.

Penalty.

TITLE I.
Notice of determination of supervisors, &c.

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§ 21. In those counties where the supervisors shall determine to abolish the distinction between town poor and county poor, and to have all the poor a county charge, it shall be the duty of the clerk of the board of supervisors, immediately to serve notice of such determination on the overseers of the poor of every town in the county. Within three months after the service of such notice, the overseers of the poor of every town, shall pay over all monies which shall remain in their hands, after discharging all demands against them as such overseers, to the county treasurer, to be applied by him towards the future taxes of such town. In case of neglect to pay over such monies, the county treasurer may maintain an action therefor, in which he shall recover interest on the monies withheld, from the time they should have been paid over.

Excise money, &c., in other counties.

§ 22. In those counties in which the distinction between county poor and town poor prevails, the excise money collected in any town, and all penalties given by law to the overseers of the poor, when received, shall be applied to the use of the poor of the town in which such money and penalties shall be collected.

Laws of 1828, 170, § 6.

Poor to be a county charge in certain counties.

§ 23. In the counties of Warren, Washington, Saratoga, and Genesee, poor persons entitled to support as aforesaid, shall be maintained at the expense of the said counties respectively; and all costs and charges attending the examinations, conveyance, support, and necessary expenses of paupers within the said counties respectively, shall be a charge upon the said counties, without reference to the number or expenses of paupers which may be sent to the poor-house of said counties, from or by any of the towns therein. The said charges and expenses shall be reported by the superintendents of the poor of the said counties, to the boards of supervisors therein respectively, and shall be assessed, levied and collected of and upon the taxable real and personal estate in the said counties, in the same manner as other county charges.

Laws of 1827, 195; 1826, 134.

When to become so in other counties.

§ 24. The board of supervisors of any county in this state, at any annual meeting, or at any special meeting called for that purpose, may determine to abolish all distinction between county poor and town poor in their counties respectively, and to have the expense of maintaining all the poor a county charge; and upon their filing such determination, duly certified by the clerk of the board, with the county clerk, the said poor shall be maintained, and the expense thereof defrayed in the manner prescribed in the preceding section relative to the counties of Warren, Washington, Saratoga and Genesee.

2 D., 179.

Notice to be given.

§ 25. When the supervisors of any county shall have determined to abolish the distinction between county poor and

town poor, the clerk of the board shall serve a copy of the resolution making such determination, upon the clerk of each town, village or city, within such county.

Laws of 1828, 170, § 3, 4 & 5; 2 D., 179.

§ 26. After such resolution shall be served, it shall be the duty of the commissioners of excise in the several towns of such county, and of the officers of every city and village therein, to pay over to the treasurer of the county all monies which shall thereafter be received for licenses to tavern-keepers, retailers or grocers, and all monies which shall be recovered as penalties, for violating the excise laws, or any other laws, and which are directed to be paid to the overseers of the poor.

Excise money, &c., to be paid to county treasurer.

[§21]

Laws of 1828, 170, § 3, 4 & 5; 12 How. P. R., 206.

§ 27. If any person having in his hands any monies directed to be paid to the county treasurer by the preceding section, shall neglect or refuse to pay the same within thirty days after demand thereof, the county treasurer may maintain an action in his name of office for the recovery thereof, together with interest from the time of such demand.

Payment, how compelled.

§ 28. In all the other counties of this state, except the counties of Warren, Washington, Saratoga, Genesee, and those counties of which the board of supervisors shall file the determination aforesaid, the poor having a settlement in any town in such county, shall be supported at the expense of such town, and the poor not having such settlement shall be supported by the county in which they may be.

Poor of other counties, how supported

§ 29. Every person of full age, who after this chapter shall commence and take effect shall be a resident and inhabitant of any town for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town. A minor may be emancipated from his or her father, and may gain a settlement,

Settlements, how gained.

1. If a female, by being married and living for one year with her husband, in which case the husband's settlement shall determine that of the wife:

Minors.

2. If a male, by being married and residing for one year separately from the family of his father:

3. By being bound as an apprentice, and serving one year by virtue of such indentures:

4. By being hired and actually serving for one year for wages to be paid to such minor. A woman of full age, by marrying, shall acquire the settlement of her husband, if he have any. And until a poor person shall have gained a settlement in his own right, his settlement shall be deemed that of his father or mother; but no child born in any place used and occupied as a residence for the poor of any town, city or county, shall gain any settlement merely by reason of the place of such birth; nor shall any child born while the mother

Married women.

TITLE 1.

is a county pauper, gain any settlement by reason of the place of its birth.

Laws of 1830, ch. 320, § 8; 2 Cow., 537; 19 J. R., 237; 14 J. R., 366.

Qualifica-
tion of last
section.

§ 30. But no residence of any person as a pauper, in the county poor-house, or place provided for the support of the poor, or in any town while supported at the expense of any other town or county, shall operate to give such pauper a settlement in the town where such actual residence may be had.

[1899]
Paupers not
to be re-
moved, how
supported.

§ 31. No person shall be removed as a pauper from any city or town to any other city or town of the same or any other county, nor from any county to any other county; but every poor person shall be supported in the town or county where he may be, as follows:

1. If he had gained a settlement in any town in such county, he shall be maintained by such town:

2. If he hath not gained a settlement in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendents of the poor, at the expense of the county:

3. If such person be in a county where the distinction between town and county poor is abolished, he shall in like manner be supported at the expense of the county, and in both the cases aforesaid, proceedings for his relief shall be had as herein after directed:

4. If such pauper be in a county where the respective towns are liable to support their poor, and hath gained a settlement in some other town of the same county than that in which he may then be, he shall be supported at the expense of the town where he may be, and the overseers shall give notice in writing to the overseers of the town to which such pauper shall belong, or to one of them, requiring them to provide for the relief and support of such pauper.

8 Pal., 410; 15 N. Y., 342; 7 J. R., 94.

Proceed-
ings to de-
termine set-
tlement of
pauper.

§ 32. If within ten days after the service of such notice, the overseers to whom the same was directed shall not proceed to contest the allegation of the settlement of such pauper, by giving the notice herein after directed, they, their successors, and the town which they represent, shall be forever precluded from contesting or denying such settlement. They may, within the time aforesaid, give notice in writing to the overseers of the town where such pauper may be, that they will appear before the county superintendents, at a place and on a day therein to be specified, which day shall be at least ten days, and not more than thirty days from the time of the service of such notice, to contest the said alleged settlement.

15 N. Y., 341.

Id.

§ 33. The county superintendents shall convene whenever required by any overseers pursuant to such notice, and shall proceed to hear and determine the controversy, and may award

costs not exceeding ten dollars, to the prevailing party, which may be recovered in any action before a court of competent jurisdiction. The decision of the superintendents shall be final and conclusive.

§ 34. The overseers of the poor of the town in which it may be alleged any pauper has gained a settlement, may at any time after receiving such notice requiring them to provide for such pauper, take and receive such pauper to their town and there support him. If they omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate them from the maintenance of such pauper, the charge of giving such notice, and the expenses of maintaining such pauper, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings, from year to year, as long as such expenses shall be incurred; and the supervisors shall annually add the amount of the said charges to the tax to be laid upon the town to which the pauper belongs, together with such sum in addition thereto, as will pay the town incurring such expenses, the lawful interest thereon, from the time of expenditure to the time of repayment, which sums shall be assessed, levied and collected, in the same manner as the other contingent charges of such town. The said monies when collected, shall be paid to the county treasurer, and be by him credited to the account of the town which incurred the said expenses.

Towns how
compelled
to support
paupers.

[623]

15 N. Y., 344.

§ 35. The support of any pauper shall not be charged to the county without the sanction of the superintendents. If a pauper be sent to the county poor-house, or place provided for the poor, as a county pauper, the superintendents in those counties where the respective towns are required to support their own poor, shall immediately inquire into the fact, and if they are of opinion that such pauper has a legal settlement in any town of the said county, they shall, within thirty days after such pauper shall have been received, give notice to the overseers of the poor of the town to which such pauper belongs, that the expenses of his support will be charged to such town, unless the said overseers, within such time as the said superintendents shall appoint, not less than twenty days thereafter, show that such town ought not to be so charged. And on the application of the said overseers, the superintendents shall re-examine the matter, and take testimony in relation thereto, and shall finally decide the question; which decision shall be conclusive.

Proceed-
ings to de-
termine
who are
county
paupers.

§ 36. In those counties where no county poor-house or other place is provided, no person shall be supported as a county pauper, without the direction of at least one superintendent. In such cases the overseers of the poor of the town where such person may be, shall immediately give notice to one of the superintendents, who shall inquire into the circum-

Ib. in coun-
ties where
there are no
poor
houses.

TITLE I.

stances; and if he is satisfied that such pauper hath not gained a legal settlement in any town of the said county, he shall give a certificate to that effect, and that such pauper is chargeable to the county. He shall report every such case to the board of superintendents, at their next meeting, who may affirm such certificate, or may annul the same, on giving due notice to the overseers of the poor of the town interested, and after hearing the allegations and proofs in the premises.

County superintendents may determine.

§ 37. If the superintendent to whom the overseers may have given such notice, shall neglect or refuse to give the certificate aforesaid, the overseers may apply to the board of county superintendents, who shall summarily hear and determine the matter, and whose decision shall be conclusive.

[§34]
Decisions of superintendents, their effect, &c.

§ 38. The decisions of the board of county superintendents, in relation to the settlement of any paupers, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signatures of such of the said superintendents as make such decisions; and a duplicate thereof, certified in the same manner, shall be filed in the county clerk's office within thirty days after the making of any such decision. Such original duplicate, or a copy thereof duly certified, shall be conclusive evidence of the facts therein contained.

13 B., 600; 22 B., 248.

Relief to paupers in counties having poor house.

§ 39. When any person shall apply for relief to any overseer of the poor, in any county where a poor-house is established, or other place provided for the reception of the poor, such overseers shall inquire into the state and circumstances of the applicant. If it shall appear that the applicant is in such indigent circumstances as to require permanent relief and support, and can be safely removed, the overseers shall, by a written order, cause the poor person to be removed to the county poor-house, or to the place provided as aforesaid, to be relieved and provided for as the necessities of such applicant may require. If the said county be one of those where the respective towns are required to support their own poor, the overseers shall designate in such order of removal whether the pauper be chargeable to the county or not; and if no such designation be made, such pauper shall be deemed to belong to the town whose overseers made such order.*

12 J. R., 351.

Expense of removal and temporary support.

§ 40. The expense of such removal shall be paid on the certificate of the keeper of the poor-house, or other place, countersigned as aforesaid, at the rate that shall have been prescribed by the superintendents; and the overseers shall be allowed such sum as may have been necessarily paid out or contracted to be paid, for the relief or support of such pauper previous to the said removal, as the superintendents shall

* Sections 39, 42, amended by Laws of 1884, ch. 296, so as to allow one overseer to act.

judge was reasonably expended while it was improper to remove such pauper, which sum shall be paid by the county treasurer on the order of the superintendents, and shall be charged to the county, if such pauper be a county charge, or to the town sending him, if he be not a county charge.

7 How. P. R., 257.

§ 41. The person so removed shall be received by the superintendents, or their agents, and be supported and relieved in the county poor-house, or such other place as shall have been provided, under the direction of the said superintendents, until it shall appear to them that such person is able to work and maintain himself, when the superintendents may in their discretion discharge him.

How supported and when to be discharged.

§ 42. If it shall appear that the person so applying, requires only temporary relief, or is sick, lame, or otherwise disabled, so that he or she can not be conveniently removed to the county poor-house, or to such place as shall have been provided by the county superintendents, the overseers shall apply to a justice of the peace of the same town, who shall examine into the facts and circumstances, and shall in writing order such sum to be expended for the temporary relief of such poor person, as the circumstances of the case shall require; which order shall entitle the overseer to receive any sum he may have paid out or contracted to pay, within the amount therein specified from the county treasurer, to be by him charged to the county, if such person be a county charge; if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars shall be expended or paid for the relief of any one poor person, or one family, without the sanction in writing of one of the superintendents of the poor of the county, which shall be presented to the county treasurer, with the order of the justice.

Relief to paupers who cannot be removed to poor house.

[225]

See note to § 39; see Laws of 1845, ch. 180, § 1; 13 J. R., 382; 3 How. P. R., 39; 8 Cow., 644.

§ 43. If application for relief be made in any of those counties where no county poor-house, or other place shall have been provided, as aforesaid, for the reception of the poor, the overseers of the poor shall, with the assistance of some justice of the peace of the same town, inquire into the facts and circumstances of the case, and shall make an order in writing for such allowance, weekly or otherwise, as the said justice, and one of the said overseers, shall think required by the necessities of such poor person.

Relief to paupers in counties not having poor houses.

§ 44. If such pauper have a legal settlement in the town where such application is made, or in any other town of the same county, the overseers shall apply the monies so allowed to the relief and support of such pauper; the monies paid by them, or contracted to be paid, pursuant to such order, shall be drawn by them from the county treasurer on producing the said order, out of the funds in his hands belonging to such town.

TITLE 1.

stances; and if he is satisfied that such pauper hath not gained a legal settlement in any town of the said county, he shall give a certificate to that effect, and that such pauper is chargeable to the county. He shall report every such case to the board of superintendents, at their next meeting, who may affirm such certificate, or may annul the same, on giving due notice to the overseers of the poor of the town interested, and after hearing the allegations and proofs in the premises.

County superintendents may determine.

§ 37. If the superintendent to whom the overseers may have given such notice, shall neglect or refuse to give the certificate aforesaid, the overseers may apply to the board of county superintendents, who shall summarily hear and determine the matter, and whose decision shall be conclusive.

[§34]
Decisions of superintendents, their effect, &c.

§ 38. The decisions of the board of county superintendents, in relation to the settlement of any paupers, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signatures of such of the said superintendents as make such decisions; and a duplicate thereof, certified in the same manner, shall be filed in the county clerk's office within thirty days after the making of any such decision. Such original duplicate, or a copy thereof duly certified, shall be conclusive evidence of the facts therein contained.

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§ 40. The expense of such removal shall be paid on the certificate of the keeper of the poor-house, or other place, countersigned as aforesaid, at the rate that shall have been prescribed by the superintendents; and the overseers shall be allowed such sum as may have been necessarily paid out or contracted to be paid, for the relief or support of such pauper previous to the said removal, as the superintendents shall

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7 How. P. R., 257.

§ 41. The person so removed shall be received by the superintendents, or their agents, and be supported and relieved in the county poor-house, or such other place as shall have been provided, under the direction of the said superintendents, until it shall appear to them that such person is able to work and maintain himself, when the superintendents may in their discretion discharge him.

How supported and when to be discharged.

§ 42. If it shall appear that the person so applying, requires only temporary relief, or is sick, lame, or otherwise disabled, so that he or she can not be conveniently removed to the county poor-house, or to such place as shall have been provided by the county superintendents, the overseers shall apply to a justice of the peace of the same town, who shall examine into the facts and circumstances, and shall in writing order such sum to be expended for the temporary relief of such poor person, as the circumstances of the case shall require; which order shall entitle the overseer to receive any sum he may have paid out or contracted to pay, within the amount therein specified from the county treasurer, to be by him charged to the county, if such person be a county charge; if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars shall be expended or paid for the relief of any one poor person, or one family, without the sanction in writing of one of the superintendents of the poor of the county, which shall be presented to the county treasurer, with the order of the justice.

Relief to paupers who cannot be removed to poor house.

[625]

See note to § 39; see Laws of 1845, ch. 180, § 1; 13 J. R., 382; 3 How. P. R., 39; 8 Cow., 644.

§ 43. If application for relief be made in any of those counties where no county poor-house, or other place shall have been provided, as aforesaid, for the reception of the poor, the overseers of the poor shall, with the assistance of some justice of the peace of the same town, inquire into the facts and circumstances of the case, and shall make an order in writing for such allowance, weekly or otherwise, as the said justice, and one of the said overseers, shall think required by the necessities of such poor person.

Relief to paupers in counties not having poor houses.

§ 44. If such pauper have a legal settlement in the town where such application is made, or in any other town of the same county, the overseers shall apply the monies so allowed to the relief and support of such pauper; the monies paid by them, or contracted to be paid, pursuant to such order, shall be drawn by them from the county treasurer on producing the said order, out of the funds in his hands belonging to such town.

TITLE I.
Notice to be
given in
certain
cases.

§ 45. If such pauper has no legal settlement in the same county, the overseers shall immediately give the notice herein before directed, to one of the county superintendents; and until the county superintendents shall take the charge of the support of such pauper, the overseers shall provide for his relief and support, as aforesaid, and the expense thereof from the time of giving such notice to a county superintendent, shall be paid to the said overseers by the county treasurer, on the production of such order and of proof by affidavit, of the time of the giving such notice, and shall be by him charged to the county.

County pau-
pers in
counties
having no
poor hou-
ses.

§ 46. Whenever the county superintendents take charge of the support of any county pauper, in those counties where no poor-house is provided, they may authorise the overseers of the poor of the town in which such pauper may be, to continue to support him, on such terms and under such regulations as they shall prescribe; and thereafter no monies shall be paid to the said overseers for the support of such pauper, without the order of the superintendents; or the said superintendents may remove such pauper to any other town, and there provide for his support, in such manner as they shall deem expedient.

[636]
Accounts
with towns
bound to
support
their poor,
by county
treasurer.

§ 47. In those counties where the respective towns are required to support their own poor, the county treasurers thereof shall respectively open and keep an account with each town, in which the town shall be credited with all monies received from the same, or from its officers, and shall be charged with the monies paid for the support of the poor chargeable to such town. And if there be a county poor-house, or other place provided in such county for the reception of the poor, the superintendents of the poor of the county shall, in each year, before the annual meeting of the board of supervisors of such county, furnish to the county treasurer a statement of the sums charged by them, as herein after directed, to the several towns for the support of their poor, which shall be charged to such towns respectively, by the county treasurer, in his accounts.

16 How. P. R., 260; 20 How. P. R., 379.

Is. by su-
perintend-
ents.

§ 48. In those counties in which a poor-house shall be established, or a place provided, by the superintendents, for the reception of the poor, and in which the several towns shall be liable for the support of their poor respectively, it shall be the duty of the superintendents, annually, and during the week preceding the annual meeting of the board of supervisors, to make out a statement of all the expenses incurred by them the preceding year, and of the monies received, and exhibiting the deficiency, if any, in the funds provided for the defraying such expenses; and they shall apportion the said deficiency among the said several towns, in proportion to the number and expenses of the paupers belonging to the said towns, respectively, who shall have been provided for by

the said superintendents, and shall charge the said towns with the said proportions; which statement shall be by them delivered to the county treasurer, as before directed.

§ 49. At the annual meeting of the board of supervisors, the county treasurer shall lay before them the account so kept by him; and if it shall appear that there is a balance against any town, the said board shall add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such a sum for interest, at the rate of seven dollars on the hundred, as will reimburse and satisfy any advances that may be made, or that may have been made, from the county treasury, for such town; which monies, when collected, shall be paid to the county treasurer.

To be laid
before su-
pervisors.
Balances,
how col-
lected

§ 50. The superintendents of the poor in each county shall annually present to the board of supervisors, at their annual meeting, an estimate of the sum which, in their opinion, will be necessary, during the ensuing year, for the support of the county poor; and the said supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as the other contingent expenses of the county, to be paid to the county treasurer, and to be by him kept as a separate fund, distinct from the other funds of the county.

Expense of
supporting
county
poor, how
defrayed.

9 B., 260.

§ 51. In those counties where there are no county poor-houses established, the overseers of the poor of the respective towns shall enter, in books to be provided at the expense of their towns, an account of all matters transacted by them, relating to their official duties; of all monies received by them, specifying from whom, and on what account; of all monies laid out and disbursed by them, to whom, and by what authority, and specifying, in each case, whether to county poor or to town poor; the names of all persons applying for relief, and ordered to be relieved as aforesaid; the day and year when they were admitted to have relief; the weekly or other sums of money allowed for that purpose, and the cause of giving such relief.

[§ 297]
Accounts of
overseers
of poor in
certain
counties.

1 R. L., 290, § 28.

§ 52. On the Tuesday next preceding the annual town-meeting of every town, the overseers of the poor shall lay the said original books before the board of town auditors, together with a just and true account of all monies by them received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed; which account shall be verified by the oaths of the overseers, and shall be filed with the town clerk. The board of town auditors shall compare the said account with the entries in the poor books aforesaid; shall examine the vouchers in support thereof, and shall audit and settle the

How audit-
ed and set-
tled.

[See ch. xi.
ante., p. 555
Article 5.]

TITLE 1.

same, and state the balance due from such overseers, or to them, as the case may be. No credit shall be allowed to any overseer for monies paid, unless it shall appear that such payment was made pursuant to a legal order.

1 R. L., 290, § 28 & 30.

Penalty.

§ 53. Every person who, having been an overseer of the poor, shall refuse or neglect to present such original books, or to exhibit such accounts, to the board of town auditors, as required in the last section, shall forfeit the sum of two hundred and fifty dollars, to be recovered by and in the name of the overseers of the poor of such town.

1 R. L., 290, § 30.

Accounts and estimates to be read at town meeting.

§ 54. In those counties where the respective towns are made liable for the support of their poor, it shall be the duty of the town clerk to exhibit at the annual town-meetings, the accounts for the support of the poor therein, the preceding year, as the same shall have been allowed and passed by the board of town auditors, which accounts shall be openly and distinctly read by the clerk of the meeting; and the overseers of the poor shall also present an estimate of the sum which they shall deem necessary to supply any deficiency of the preceding year, and to provide for the support of the poor for the ensuing year.

1 R. L., 287, § 23; Laws of 1817, 176; 16 How. P. R., 257.

Expense of supporting town poor, how defrayed.

[1835]

§ 55. The inhabitants of such town shall thereupon, by a vote of a majority of the persons qualified to choose town officers, determine upon the sum of money which shall be assessed upon the said town the ensuing year, for the purpose aforesaid. The sum so voted, when raised and collected, in those counties where a county poor-house, or other place shall have been provided for the reception of the poor, shall be paid to the county treasurer, and by him placed to the credit of the town: in all other counties, the sum so voted by any town, shall be paid to the overseers of the poor thereof.

1 R. L., 287, § 23; Laws of 1817, 176; 16 How. P. R., 260.

Ib. in certain cities.

§ 56. The overseers of the poor in the cities of Albany, Hudson, Troy, Schenectady and Oswego, shall lay their books before, and render their accounts to the common councils of the said cities respectively, from time to time, as shall be required. The common councils of such of the said cities as shall be liable for the support of their own poor, shall yearly, determine the sum of money to be raised in such cities respectively, for the support of the poor for the ensuing year; a certified copy of which shall be laid before the board of supervisors of the county, who shall cause the same to be assessed, levied, collected and paid to the county treasurer.

1 R. L., 287; Laws of 1853, ch. 70.

Compensation to overseers

§ 57. The accounts of overseers of the poor, and of justices of the peace, for any personal or official services rendered by

TITLE 1.
and jus-
tices.

them, in relation to the poor, shall be audited and settled by the board of supervisors, and the sums thus audited and allowed, shall be paid by the county treasurer; and if such services were rendered in behalf of any town liable to support its own poor, the same shall be charged to such town. No allowance for time or services shall be made to any officer for attending any board with any accounts, for the purpose of having the same audited or paid.

See Laws of 1832, ch. 26.

§ 58. Any person who shall send, carry, transport, remove or bring, or who shall cause to be sent, carried, transported, brought, or removed, any poor or indigent person, from any city, town, or county, to any other city, town, or county, without legal authority, and there leave such poor person, with intent to make any such city, town, or county to which the removal shall be made, chargeable with the support of such pauper, or who shall entice any such poor person so to remove, with such intent, shall forfeit fifty dollars, to be recovered by and in the name of the overseers of the poor of the town to which such pauper shall be brought or removed, or in the name of the superintendents of the poor of the county into which the said poor person shall be removed; and shall, moreover, be deemed guilty of a misdemeanor, and on conviction, shall be imprisoned not exceeding six months, or fined not exceeding one hundred dollars, or both, in the discretion of the court.

Penalty for removing, &c., pauper.

Laws of 1817, 77; 1824, 385, § 9; 1825, 283; 1827, 255; 24 W., 344.

§ 59. The pauper so removed, brought, or enticed, shall be maintained by the county superintendents of the county where he may be. They may give notice to either of the overseers of the poor of the town from which he was brought or enticed, if such town be liable for his support; and if there be no town in the county from which he was brought or enticed, liable for his support, then to either of the county superintendents of the poor of such county, informing them of such improper removal, and requiring them forthwith to take charge of such pauper.

Proceedings to compel support of a pauper removed.

[629]

§ 60. The county superintendents, or the overseers to whom such notice may be directed, shall, within thirty days after the service thereof, take and remove the pauper so brought or enticed, to their county or town, and there support him, and pay the expense of such notice, and of the support of such pauper; or they shall, within the said time, by a written instrument under their hands, notify the county superintendents from whom such notice was received, or either of them, that they deny the allegation of such improper enticing or removal, or that their town is liable for the support of such pauper.

Liability, how contested.

§ 61. If there shall be a neglect to take and remove such pauper, and also to notify such denial, within the time above prescribed, the said county superintendents and overseers

Neglect to contest.

TITLE 1.

respectively, whose duty it was so to do, their successors, and their respective counties or towns, shall be deemed to have acquiesced in the allegations contained in such first notice, and shall be forever precluded from contesting the same; and their counties and towns respectively, shall be liable for the expenses of the support of such pauper, which may be sued for and recovered, from time to time, by the county superintendents incurring the said expenses, in actions against the superintendents of the poor of the county, or the overseers of the poor of the town, as the case may be, so liable for such expenses.

Suit, when
to be
brought.

§ 62. Upon the service of any such notice of denial the county superintendents upon whom the same may be served, shall, within three months, commence a suit against the overseers of the poor of the town, or the county superintendents of the poor of the county, to whom the first notice was directed, or against their successors in office, for the expenses incurred in the support of such pauper, and shall prosecute the same to effect; if they neglect to do so, they, their successors, and their county, shall be forever precluded from all claim against the county or town to whose officers such first notice was directed, or any of their officers, for any expenses that may have been, or may be, incurred for the support of such pauper.

4 H., 559.

Penalty on
superin-
tendents for
neglect to
render ac-
counts, &c.

§ 63. Every county superintendent who shall neglect to render any account, or statement, to the board of supervisors, as herein required, or to pay over any monies, within the time prescribed by law, shall forfeit two hundred and fifty dollars, to be sued for and recovered by and in the name of the county treasurer. The superintendents shall also be liable to an action, either jointly, or severally, by the county treasurer, for all monies which shall be in their hands after the time the same should have been paid over according to law, with interest thereon, at the rate of ten dollars upon the hundred for a year, from the time when the same should have been paid over.

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§ 64 repealed by Laws of 1831, ch. 277, § 3, and a new provision enacted.

Payment
over of pen-
alties and
their appli-
cation.

§ 65. All penalties imposed by this Title, shall be for the benefit of the poor; when recovered, they shall be paid to the county treasurer, and by him credited to the town by whose officers they have been collected, if such town be liable for the support of its own poor, or to the county, when collected by the county superintendents; if not paid by the persons collecting the same, when demanded by the county treasurer, he may maintain an action therefor, in his name of office.

Overseers
to sue for
penalties.

§ 66. Whenever it shall be made to appear to the satisfaction of any overseer of the poor, either upon complaint, or otherwise, that a penalty has been incurred by the violation

of any provisions contained in the statutes of this state, which such overseer is directed by law to collect, it shall be his duty immediately to commence a suit for such penalty, and to prosecute the same diligently to effect.

Laws of 1820, 30, §§ 1 & 4.

§ 67. In auditing the accounts of the overseers of the poor, by the board of town auditors, allowance shall be made to them, for all costs to which they may have been subjected, or which shall have been recovered against them, in any suit brought by them pursuant to law; and they shall also be allowed the same daily pay, for attending to any such suit, as is allowed them for the performance of their official duties. Allowances therefor, and for costs.

§ 68. Such allowances may be credited to them, in their accounts for monies collected for penalties, and may be deducted from such monies; and the balance of such penalties shall be paid to their successors in office, or to the county treasurer, as directed by law, in respect to such penalties.

§ 69. If there be not sufficient monies in their hands to satisfy such allowances, the same shall be paid as other town charges.

§ 70. Where, by the existing laws, any poor persons are maintained by any county, or by two or more towns, they shall continue to be so maintained. Certain paupers.

1 R. L., 292, § 32.

§ 71. Where, by virtue of any special act of the legislature, any one or more towns have erected a town poor-house, the same shall be continued, and the poor of such towns respectively, may be supported therein by the overseers of the poor of the town. [§31] Town poor-houses.

Laws of 1820, 102; 1821, 243; 1822, 138; 1823, 286.

§ 72. Every poor-house, alms-house, or other place provided by any city, town or county, for the reception and support of the poor, and all real and personal property whatever, belonging to or connected with the same, shall be exempt from all assessment and taxation, levied either by the state, or by any county, city, town or village; and the keeper of every poor-house, alms-house, or other place provided as aforesaid, shall be exempt from all service in the militia, from serving on juries, and from all assessments for labor on the highways. Poor-houses, &c., exempt from taxes.
Keepers exempt from juries, &c.

Laws of 1826, 7.

§ 73. In those counties where county poor-houses may be established, the superintendents may provide for the support of paupers that may be idiots, or lunatics, out of such poor-house, in such manner as shall best promote the interests of the county, and conduce to the comfort and recovery of such paupers. Idiots and lunatics.

§ 74. Whenever any town shall have any monies raised for the support of the poor, invested in the name of the overseers of the poor of such town, the said overseers shall continue to have the control thereof, and shall apply the interest arising Invested poor monies.

TITLE 1.

therefrom, to the support of the poor of their town, so long as such town shall be liable to support its own poor; and if the town shall be relieved from the liability to support its own poor, by a vote of the supervisors of the county, the monies so raised and invested, shall be applied to the payment of such taxes upon the town, as the inhabitants thereof shall, at an annual town meeting, determine.

Reports by
county super-
intendents to sec-
retary of
state.

§ 75. It shall be the duty of the superintendents of the poor of every county in this state, during the month of December, in each year, to report to the secretary of state, in such form as he shall direct, the number of paupers that have been relieved or supported in such county the preceding year, distinguishing the number of county paupers from the number of town paupers, if any; the whole expense of such support, specifying the amount paid for transportation of paupers, and any other items which do not compose any part of the actual expense of maintaining the paupers, and the allowance made to superintendents, overseers, justices, keepers and officers; the actual value of the labor of the paupers maintained, and the estimated amount saved in the expense of their support, in consequence of their labor.

See Laws of 1842, ch. 214.

Reports by
supervisors
of towns
supporting
their own
poor.

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§ 76. It shall be the duty of the supervisors of every town in those counties where all the poor are not a county charge, to report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the board of town auditors, in each year, an abstract of all such accounts for the preceding year, which shall exhibit the number of paupers that have been relieved or supported in such town, the preceding year, specifying the number of county paupers, and of town paupers, the whole expense of such support, and specifying the allowance made to overseers, justices, constables, or other officers, and any other items which shall not comprise any part of the actual expense of maintaining the paupers.

Duty of
clerk of su-
pervisors.

§ 77. The said abstracts shall be delivered by the clerk of the board of supervisors, to the county superintendents, to be included by them in their report aforesaid.

Penalty for
neglect and
for false re-
port.

§ 78. Any superintendent, supervisor, or clerk, who shall neglect or refuse to make such reports, abstracts, or copies aforesaid, or who shall wilfully make any false report, abstract, or copy, shall forfeit one hundred dollars, to be recovered by the district attorney of the county, in the name of the people of this state, and to be paid into the county treasury, for the benefit of the poor thereof. The secretary of state shall give notice to the district attorney of the county, of every such neglect or misconduct; and it shall be the duty of the district attorney, on receiving such notice, or in any way receiving satisfactory information of such neglect or misconduct, to prosecute for the recovery of such penalties.

TITLE 2.
Reports by
secretary of
state.

Overseers,
when to
disburse
monies.

Excise
money to
be paid to
overseers,

§ 79. The secretary of state shall annually lay before the legislature, during the first month of its session, an abstract of the said returns and reports.

§ 80. In those counties where there is no county poor-house or other place provided for the reception of the poor the monies raised and collected in the several towns for the support of the poor shall be received and disbursed by the overseers of the poor in such towns respectively.

§ 81. It shall be the duty of the commissioners of excise of the several towns in those counties where there is no county poor-house or other place provided for the reception of the poor, to pay to the overseers of the poor in their respective towns, all monies received by them by virtue of their offices.

§ 82. In those counties where no county poor-house or other place shall have been provided for the reception of the poor, and where the distinction of town and county poor is not abolished, it shall be the duty of the commissioners of excise in the several towns to pay all monies received by them by virtue of their offices to the overseers of the poor in their respective towns. ^{1b.}

Laws of 1830, ch. 320, § 9; see Laws of 1831, ch. 277; 1829, ch. 352; 1834, ch. 236; 1835, ch. 299; 1842, ch. 214; 1845, ch. 180; 1848, ch. 176; 1855, ch. 159; 1857, ch. 61.

TITLE II.

OF BEGGARS AND VAGRANTS.

Sec. 1. Who are to be deemed vagrants.

2. Constables, to carry vagrants before magistrates.

3. Authority of magistrate; when to commit vagrant to poor-house, when to jail.

4. Children begging, to be sent to poor-house, and may be bound out.

§ 1. All idle persons who, not having visible means to maintain themselves, live without employment; all persons wandering abroad and lodging in taverns, groceries, beer-houses, out-houses, market-places, sheds or barns, or in the open air, and not giving a good account of themselves; all persons wandering abroad and begging, or who go about from door to door, or place themselves in the streets, highways, passages, or other public places, to beg or receive alms, shall be deemed vagrants.

Enumera-
tion of va-
grants.

1 R. L., 114, § 1; 19 How. P. R., 458.

§ 2. It shall be the duty of every constable or other peace officer, whenever required by any person, to carry such vagrant before a justice of the peace of the same town, or before the mayor, recorder, or any one of the aldermen of the city in which such vagrant shall be, for the purpose of examination.

To be
brought be-
fore magis-
trates.

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§ 3. If such justice or other officer be satisfied by the confession of the offender, or by competent testimony, that such

Proceed-
ings.

TITLE I.

When va-
grant to be
sent to
county poor
house.
When to
jail.

person is a vagrant, within the description aforesaid, he shall make up and sign a record of conviction thereof, which shall be filed in the office of the clerk of the county; and shall, by warrant under his hand, commit such vagrant, if he be not a notorious offender, and be a proper object for such relief, to the county poor-house, if there be one, or to the alms-house or poor-house of such town or city, for any time not exceeding six months, there to be kept at hard labor; or if the offender be an improper person to be sent to the poor-house, then he shall be committed to the bridewell or house of correction of such city or county, if there be one, and if none, to the common jail of such county, for a term not exceeding sixty days, there to be kept, if the justice think proper so to direct, upon bread and water only, for such time as shall be directed, not exceeding one half the time for which he shall be committed.

1 R. L., 114, § 1; Laws of 1824, 384.

Children
begging
how to be
dealt with.

§ 4. If any child shall be found begging for alms, or soliciting charity from door to door, or in any street, highway, or public place of any city or town, any justice of the peace, on complaint and proof thereof, shall commit such child to the county poor-house, if there be one, or to the alms-house or other place provided for the support of the poor, there to be detained, kept, employed and instructed in such useful labor as such child shall be able to perform, until discharged therefrom by the county superintendents of the poor, or bound out as an apprentice by them, or by the commissioners of the alms-house, or the overseers of the poor.

Laws of 1821, 182, § 3; 1824, 384, § 4; see Laws of 1845, ch. 3; 1855 ch. 268.

TITLE III.**OF THE SAFE KEEPING AND CARE OF LUNATICS.**

- SEC. 1. Committees of a lunatic, to confine and maintain him.
 2. If he has not property, relatives to confine and support him.
 3. Powers of overseers of poor to compel relatives to confine him.
 4. Lunatics how to be secured and where confined.
 5. Duty of overseers to procure suitable place.
 6. When lunatics may be confined in jails.
 7. Not to be confined with criminals.
 8. Two justices may apprehend lunatic.
 9. Superintendents and overseers may send lunatics to asylum in New-York.
 10. Expense, how defrayed.
 11. Penalty for confining lunatics otherwise than as herein directed.
 12. Powers of chancellor respecting lunatics, not affected.
 13. Proceedings to compel committees to confine and support him.
 14. County superintendents to have the same powers as overseers.

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Lunatics
having pro-
perty, to be
confined,
&c., by
their com-
mittees.

§ 1. When any person, by lunacy or otherwise, becomes furiously mad, or so far disordered in his senses as to endanger his own person, or the person or property of others, if permitted to go at large, who is possessed of sufficient property to maintain himself, it shall be the duty of the committee of

his person and estate, to provide a suitable place for the confinement of such person, and to confine and maintain him in such manner as shall be approved by the overseers of the poor of the city or town.

31 B., 473.

§ 2. If such person is not possessed of sufficient property to maintain himself, it shall be the duty of the father and mother, and the children of such person, being of sufficient ability, to provide a suitable place for his confinement, and to confine and maintain him in such manner as shall be approved by the overseers of the poor of the city or town.

Not having property, to be confined, &c., by certain relatives.

Laws of 1827, 319, § 5.

§ 3. The overseers of the poor shall have the same remedies to compel such relatives to confine and maintain such lunatic or mad person, and to collect the costs and charges of his confinement, as are given by law in the case of poor and impotent persons becoming chargeable to any town.

Duty, how enforced.

§ 4. In case of the refusal or neglect of any committee of such lunatic or mad person, or of his relatives, to confine and maintain such person as aforesaid; or when there is no such committee or relative of sufficient ability; it shall be the duty of the overseers of the poor of the city or town where any lunatic or mad person shall be found, to apply to any two justices of the peace of the same city or town, who, upon being satisfied upon examination, that it would be dangerous to permit such lunatic to go at large, shall issue their warrant directed to the constables and overseers of the poor of such city or town, commanding them to cause such lunatic or mad person to be apprehended, and to be safely locked up and confined in such secure place as may be provided by the overseers of the poor, to whom the same shall be directed, within the town or city of which such overseers may be officers, or within the county in which such city or town may be situated, or in the county poor-house in those counties where such houses are established, or in such private or public asylum as may be approved by any standing order or resolution of the supervisors of the county in which such city or town may be situated, or in the lunatic asylum in the city of New-York.

Lunatics, how secured.

Laws of 1827, 319; 1 R. L., 116; Laws of 1838, ch. 218.

§ 5. It shall be the duty of the overseers of the poor to whom such warrant shall be directed, to procure a suitable place for the confinement of such lunatic as therein directed, pursuant to the preceding section.

Duty of overseers.

Laws of 1827, 319, § 1.

§ 6. No person who, by reason of lunacy or otherwise, is furiously mad, or so far disordered in his mind as to be dangerous if permitted to go at large, shall be committed as a disorderly person, to any prison, jail, house of correction

How and when lunatics may be confined in jails.

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TITLE 2.

or confined therein, unless an agreement shall have been made for that purpose with the keepers thereof; or in any other way than as is herein directed.

Laws of 1827, 319, § 4.

In what manner and for what time to be confined.

§ 7. No such lunatic or mad person, or person disordered in his senses, shall be confined in the same room with any person charged with or convicted of any crime; nor shall such person be confined in any jail more than four weeks, and if he continue furiously mad or dangerous, he shall be sent to the asylum in New-York, or to the county poor-house or alms-house, or other place provided for the reception of lunatics, by the county superintendents.

Laws of 1827, 319, § 2 & 3.

Powers of two justices in securing lunatics.

§ 8. Any two justices of the peace of the city or town where any such lunatic or mad person shall be found, may, without the application of any overseers of the poor, and upon their own view, or upon the information or oath of others, whenever they deem it necessary, issue their warrant for the apprehension and confinement of such lunatic or mad person, as aforesaid.

1 R. L., 116, § 6.

Lunatics may be sent to N. Y. asylum.

§ 9. The county superintendents of the poor of any county, and any overseers of the poor of any town, to which any person shall be chargeable, who shall be or become a lunatic, may send such person to the lunatic asylum in the city of New-York, by an order under their hands.

Expense thereof and of lunatic's support.

§ 10. The expense of sending any lunatic to the asylum at New-York, and of supporting him there, shall be defrayed by the county or town to which he may be chargeable; if chargeable to a county, or to any town whose poor monies are required to be paid into the county treasury, such expense shall be paid by the county treasurer, out of the funds appropriated to the support of the poor belonging to such county or town, after being allowed and certified by the county superintendents. If such lunatic be chargeable to a town, whose poor monies are not required to be paid into the county treasury, such expense shall be paid by the overseers of the poor thereof.

Penalty for confining lunatics, &c.

§ 11. Any overseer of the poor, constable, keeper of a jail, or other person, who shall confine any such lunatic or mad person, in any other manner or in any other place than such as are herein prescribed, shall be deemed guilty of a misdemeanor; and on conviction, shall be liable to a fine not exceeding two hundred and fifty dollars, or to imprisonment not exceeding one year, or to both, in the discretion of the court before which the conviction shall be had.

Powers of chancery not to be affected.

§ 12. None of the foregoing provisions shall be deemed to restrain or abridge the power and authority of the chancellor, concerning the safe-keeping of any lunatics, or the charge of their persons or estates.

§ 13. The overseers of the poor of any city or town shall have the same remedies to compel the committee of the estate of any lunatic to confine and maintain such lunatic or mad person, and to collect of such committee the costs and charges of his confinement and support, as are given in the preceding sections against the relatives of such lunatic. And the court of general sessions of the peace of the city or county, shall make orders against such committee personally, and enforce them in the same manner as against the relatives of any poor person, so long as such committee hath any property in his hands for the support of such lunatic.

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Commit-
tees of a lu-
natic how
compelled
to confine
him, &c.

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§ 14. The county superintendents of the poor shall have all the powers and authority herein given to overseers of the poor of any town.

Powers of
county su-
perintend-
ents.

See Laws of 1842, ch. 135; 1844, ch. 337.

TITLE IV.

OF THE CARE OF HABITUAL DRUNKARDS.

SEC. 1. Powers of overseers to forbid sale of liquor to drunkards.

2. Penalty for selling, &c., contrary to notice.
3. Person designated as a drunkard may contest the fact.
- 4, 5 & 6. Proceedings to try and determine the fact.
7. Effect of verdict of jury.
- 8 & 9. Costs, when to be allowed; how collected.
10. Accounts of overseers, how allowed and paid.
11. When overseers may revoke notice given by them.

§ 1. Whenever the overseers of the poor of any city or town shall discover any person to be an habitual drunkard, they may, by writing under their hands, designate and describe such drunkard, and by written notice signed by them, require every merchant, distiller, shop-keeper, grocer, tavern-keeper, or other dealer in spirituous liquors, and every other person, residing within the city or town where such drunkard shall reside, or in any other city or town near to or adjoining such city or town, not to give, or sell under any pretence, any spirituous liquors to such drunkard.

Delivery of
liquor to
drunkards,
how prohib-
ited.

This Title is compiled from the act of 1821, 99, and that of 1822, 131, with few variations.

§ 2. If after the personal service of such notice, any such person shall knowingly give or sell in any manner whatever, spirituous liquors to any such drunkard, except by the personal direction or on the written certificate of some physician, regularly licensed to practice, according to the laws of this state, stating that such liquor is necessary for the preservation or recovery of the health of such drunkard, he shall forfeit for every offence the sum of ten dollars, for the use of the poor of the town where such drunkard resides.

Penalty for
disobeying
notice.

§ 3. Any person so designated by the overseers of the poor as an habitual drunkard, may apply to any justice of the peace of the city or town in which the person so designated

Charge may
be con-
tested.

TITLE 4

resides, for process to summon a jury to try and determine such fact of drunkenness.

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Proceed-
ings.

Venire.

§ 4. On such application, the justice shall immediately give notice thereof, in writing, to the overseers of the poor, specifying the time and place where the parties shall meet for the trial of such fact, and shall issue a venire to any constable to summon a jury of twelve persons, competent to serve on juries, to appear at the said time and place, for the purpose of trying the said fact.

It.

Jury.

§ 5. Such jury shall be summoned, returned, and six of them shall be ballotted for by such justice, and shall be sworn well and truly to try the fact of the alleged drunkenness, in the same manner as for the trial of issues in suits brought before a justice of the peace; and witnesses shall be summoned, and their attendance and testimony enforced, and they shall be sworn and examined before the said jury in like manner.

It.

Trial.

§ 6. The said jury shall hear the allegations and proofs offered on both sides, and shall proceed in all respects as in trials at law, to render their verdict; which verdict shall be entered by such justice in a book, to be provided by him for the purpose.

Effect of a
verdict.

§ 7. The said verdict, or an attested copy thereof, under the hand of such justice, shall be received and deemed to be presumptive evidence of the fact thereby found, in any action between the overseers of the poor and any person prosecuted by them for the penalty herein before imposed.

Costs.

§ 8. If by the verdict of the jury, it shall be found that the person demanding such trial is an habitual drunkard, the justice shall enter judgment against such person, and award execution for the costs of the overseers of the poor in attending such trial, in the same manner as in suits between individuals, which justices of the peace are authorised to try and determine.

It.

§ 9. If it be found that such person is not an habitual drunkard, such justice shall in like manner enter judgment and award execution for the costs of such person, against the said overseers, unless it shall appear to such justice that the said overseers acted in good faith, and had reasonable cause to believe such person an habitual drunkard; in which case no costs shall be awarded against them, but each party shall pay their own costs.

Overseers,
how paid
for services.

§ 10. The accounts of the overseers of the poor, for the expense of defending against any such application, shall be audited and allowed in the same manner as the other expenses of such city or town.

When no-
tice may be
revoked.

§ 11. If at any time the overseers of the poor shall be satisfied that such drunkard has reformed and become temperate, they may revoke and annul any such notice given by them or any of their predecessors in office.

TITLE V.

TITLE A
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OF DISORDERLY PERSONS.

SEC. 1. Disorderly persons enumerated.

2. Proceedings against them; surety for good behavior when required.
3. What acts to be deemed breaches of recognizance.
4. Recognizance, when prosecuted; recovery how applied.
5. Court may require new sureties or commit to jail.
6. When persons committed for want of sureties, may be discharged.
7. List of disorderly persons to be laid before general sessions.
8. Court to inquire into each case and hear proofs.
9. Court may discharge, or authorise the binding out of disorderly persons.
10. Court may commit to prison; duration of imprisonment, &c.
11. When disorderly persons compelled to work.
12. Expense how defrayed.
13. Proceeds of labor how disposed of.

§ 1. All persons who shall abandon or neglect to support their wives or children, or who threaten to run away and leave their wives or children a burthen on the public; all persons pretending to tell fortunes, or where lost or stolen goods may be found; all common prostitutes, all keepers of bawdy houses or houses for the resort of prostitutes, drunkards, tiplers, gamesters, or other disorderly persons; all persons who have no visible profession or calling to maintain themselves by, but who do, for the most part, support themselves by gaming; all jugglers, common showmen and mountebanks, who exhibit or perform for profit any puppet show, wire or rope dance, or other idle shows, acts or feats; all persons who keep in any public highway or place, or in any place where spirituous liquors are sold, any keno table, wheel of fortune, thimbles, or other table, box, machine, or device for the purpose of gaming: all persons who go about with such table, wheel, or other machine or device, exhibiting tricks or gaming therewith; all persons who play in public streets or highways, with cards, dice, or any other instrument or device for gaming; shall be deemed disorderly persons.

6 H., 77; 3 D., 101; Laws of 1861, ch. 127.

§ 2. Upon complaint made on oath to any justice of the peace against any person as being disorderly, he shall issue his warrant for the apprehension of the offender, and cause him or her to be brought before such justice for examination. If it shall appear by the confession of the offender, or by competent testimony, that he or she is a disorderly person, the justice may require of the offender sufficient sureties for his or her good behavior for the space of one year. In default of such sureties being found, the justice shall make up, sign and file in the county clerk's office, a record of the conviction of such offender as a disorderly person, specifying generally the nature and circumstances of the offence, and shall, by warrant under his hand, commit such offender to the common jail of the city or county, there to remain until such

Enumeration
tion of dis-
orderly per-
sons.

Proceed-
ings against
them.

Surety for
good be-
havior.

Record of
conviction
and com-
mitment.

TITLE I.

sureties be found, or such offender be discharged according to law.

1 R. L., 114, § 1; 1 R. L., 154, § 9; Laws of 1819, 240; 1861, ch. 127, § 5 B., 207; 4 B., 33; 23 W., 48; 6 H., 75.

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Breaches of
recogniz-
ance.

§ 3. It shall be deemed a breach of such recognizance, for any person so bound on account of being a gamester, at any one time or sitting to play or bet for any money or other thing exceeding the sum or value of two dollars and fifty cents. In all other cases, the committing any of the acts which constituted the person so bound a disorderly person, shall be deemed a breach of the condition of such recognizance.

1 R. L., 154, § 10.

Prosecu-
tions there-
for.

§ 4. If any breach of such recognizance for good behavior happen, such recognizance shall be prosecuted at the instance of any overseer of the poor, county superintendent of the poor, or justice of the peace, and the penalty when collected, shall be paid into the county treasury, for the benefit of the poor of such county.

Consequen-
ces of re-
covery.

§ 5. Upon a recovery being had, upon any such recognizance, the court before which it shall be had, may, in its discretion, either require new sureties for good behavior to be given, or may commit the offender to the common jail of the city or county, for any term not exceeding six calendar months.

Two justi-
ces may dis-
charge in
certain ca-
ses.

§ 6. Any person committed to the common jail for not finding sureties for good behavior, may be discharged by any two justices of the peace of the county, upon giving such sureties for good behavior as were originally required from such offender.

1 R. L., 115, § 2; 5 B., 208; 23 W., 47.

Jail keeper
to exhibit
lists, &c., to
general ses-
sions.

§ 7. It shall be the duty of the keeper of every jail, to lay before the court of general sessions of the peace, on the first day of its meeting, next after the commitment of any disorderly person, a list of the persons so committed and then in his custody, with the nature of their offences, the name of the justice committing them, and the time of imprisonment.

Duty of
court.

§ 8. The court of general sessions of the peace shall inquire into the circumstances of each case, and hear any proofs that may be offered, and shall examine the record of conviction, which shall be deemed presumptive evidence of the facts therein contained, until disproved.

1 R. L., 115, § 4.

Court may
discharge,
or author-
ize binding
out.

§ 9. The court may discharge such disorderly person from confinement, either absolutely or upon receiving sureties for his or her good behavior, in its discretion; or the said court may, in its discretion; or the said court may, in its discretion, authorise the county superintendents of the poor, or the overseers of the poor of any town, or the commissioners of any alms-house, to bind out such disorderly persons as shall be

TITLE 4

minors, in some lawful calling, as servants, apprentices, mariners, or otherwise, until they shall be of full age respectively; or to contract for the service of such disorderly persons as shall be of full age, with any person, as laborers, servants, apprentices, mariners, or otherwise, for any term not exceeding one year; which binding out and contracts shall be as valid and effectual, as the indenture of any apprentice with his own consent, and the consent of his parents, and shall subject the persons so bound out or contracted, to the same control of their masters respectively, and of the court of general sessions of the peace, as if they were so bound as apprentices.

Effect of indentures.
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1 R. L., 115, § 4.

§ 10. The said court may, in its discretion, order any such disorderly person to be kept in the common jail for any term not exceeding six months at hard labor; or may direct that, during any part of the time of imprisonment, not exceeding thirty days, such offender shall be kept on bread and water only.

May commit to jail.

§ 11. If there be no means provided in such jail for employing offenders at hard labor, the court may direct the keeper thereof to furnish such employment as it shall specify, to such disorderly persons as shall be committed thereto, either by a justice or any court, and for that purpose to purchase any necessary raw materials and implements, not exceeding in amount such sum as the court shall prescribe, and to compel such persons to perform such work, as shall be so allotted to them.

Disorderly persons may be compelled to work, &c.

§ 12. The expenses incurred in pursuance of such order, shall be paid to the keeper by the county treasurer, on the production of the order of the court, and an account of the materials purchased, verified by the oath of the keeper.

Expense, how defrayed.

§ 13. The keeper shall sell the produce of such labor, and shall account for the first cost of the materials purchased, and for one half of the surplus, to the board of supervisors, and pay the same into the county treasury; and the other half of such surplus shall be paid to the person earning the same, on his or her discharge from imprisonment. The keeper shall account to the court whenever required, for all materials purchased, and for the disposition of the proceeds of the earnings of such offenders.

Disposition of proceeds; accounting for.

TITLE VI.

OF THE SUPPORT OF BASTARDS.

- SEC. 1. Who are to be deemed bastards.
 2. To be supported by father and mother, or by county or town.
 3. Penalty for removing mother of bastard; how supported after removal.
 4. Proceedings against county or town from which she was removed.
 5. Superintendents and overseers to institute proceedings to compel support.
 6. Justice to ascertain father of bastard, and issue a warrant.
 7. Proceedings when father out of the county.
 8. Justice indorsing warrant may take one of two bonds, from father.

TITLE 6.

Sec. 9. Proceedings upon bond being executed.

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10. Upon failure to execute bond, father to be carried before justice issuing warrant.
11. Who shall associate another justice.
12. Proceedings may be adjourned.
13. Powers and duties of justices, on hearing.
14. Persons adjudged to be father, to enter into bond.
15. On executing bond, to be discharged.
16. Amount of penalty in bonds.
17. To remain in custody during examination.
18. Proceedings when bond given out of the county.
19. Examination to be had in presence of father.
20. Mother how compelled to disclose name of father.
21. In what cases, mother compelled to support bastard.
22. Proceedings in case of her refusal to support.
23. When amount may be reduced; when increased.
24. Appeals from determinations of justices.
25. Justice not to sit in general sessions on appeals.
26. Bonds to be transmitted to general sessions.
27. Subpoenas for parties in appeal; effect thereof.
28. Proceedings of court on appeal.
29. Court may quash, affirm, or vary orders.
30. In what cases father to be discharged.
31. Proceedings by general sessions on affirming order.
32. Father neglecting to give bond, to be committed.
33. When bond for appearance, to be forfeited.
34. Duty of general sessions when mother bound to appear.
35. Order against mother may be confirmed or varied, or discharged.
36. If order be affirmed, proceedings to compel obedience.
- 37 & 38. Costs on appeal, how awarded and collected.
39. Original order of filiation, when to be made by court.
40. Proceedings, on order of filiation being quashed.
41. Court to inquire into circumstances of father or mother imprisoned.
42. In what cases to order discharge of father or mother.
43. Notice to be given, before discharge.
44. Persons imprisoned, not entitled to discharge under insolvent act.
45. Bonds to be signed and transmitted to court.
46. How to be prosecuted; recovery how to be paid and applied.
47. By whom bonds for support, to be prosecuted.
48. Proceedings thereon; what to be deemed breaches thereof.
49. Proceedings for subsequent breaches; recovery how applied.
50. Costs on recovery, how collected.
51. Actions may be brought, although there is a bond.
52. Proceedings against father or mother absconding, &c.
53. Mother and bastard how to be supported.
54. Mother and child not to be removed without her consent.
55. Overseers to notify superintendents, when county chargeable.
56. Duty of superintendents to provide for mother and child.
57. Until taken charge of, to be supported by overseers.
58. Overseers to support bastard and mother, chargeable or not.
59. Monies received by overseers from parents, how applied.
60. Monies, to be paid over.
61. Disputes concerning settlement of bastard, how determined.
- 62, 63, & 64. Proceedings when bastard is chargeable to another town.
65. Mode of ascertaining sum to be allowed for support.
66. When mother and child to be removed to county poor-house.
67. Penalty for neglect to support bastards, &c.
68. Compromise with putative fathers may be made in New York.

Sec. 69. Penalty on constable, for neglect to deliver over bonds.

70. Justice not liable for endorsing warrants under this Title.

71. Provision in case of death, absence, &c. of justice issuing a warrant.

§ 1. Every child shall be deemed a bastard within the meaning of this Title, who shall be begotten and born, Who are bastards.

1. Out of lawful matrimony:

2. While the husband of its mother continued absent out of this state, for one whole year previous to such birth, separate from its mother, and leaving her during that time continuing and residing in this state: [649]

3. During the separation of its mother from her husband, pursuant to a decree of any court of competent authority.

1 R. L., 306, § 1 & 2; 15 B., 286.

§ 2. The reputed father and the mother of every bastard shall be liable for its support; in their default or inability, it shall be supported by the county or town in which it shall be born, as hereinafter provided. How supported.

4 D., 520.

§ 3. If the mother of any bastard, or of any child likely to be born a bastard, shall be removed or clandestinely brought, or enticed to remove, into any county, from any other county of this state, for the purpose of avoiding the charge of such bastard or child upon the county or any town, from which she shall have been so brought or enticed to remove, the same penalties shall be imposed on every person so bringing, removing or enticing such mother to remove, as are provided in the case of the clandestine or fraudulent removal of a pauper. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor, of the county where she shall be, if no provision be made by the father of such child. Removal of mother prohibited; how supported after removal.

§ 4. Such mother and her child shall in all respects be deemed paupers; and the same proceedings may be had by the county superintendents to charge the town or county from which she was removed or enticed, for the expense of supporting her and her child, as are provided in the case of paupers fraudulently or clandestinely removed; and an action may be maintained in the same manner for the said expenses, and for all expenses properly incurred in securing the father of such child, or in seeking to compel its support by such father or its mother. Proceedings to compel support of mother and child, by town or county from which they were removed.

§ 5. If any woman shall be delivered of a bastard child, which shall be chargeable or likely to become chargeable to any county, city or town; or shall be pregnant of a child likely to be born a bastard, and to become chargeable to any county, city or town; the superintendents of the poor of the county, or any of them, or the overseers of the poor of the town or city, or any of them, where such woman shall be, shall apply to some justice of the peace of the same county to make inquiry into the facts and circumstances of the case. Duty of superintendents and overseers.

25 W., 620; 10 J. R., 93.

TITLE 6.

they shall determine the sum to be paid by such putative father, for the sustenance of such mother during her confinement, and her recovery therefrom:

4. They shall certify the reasonable costs of apprehending and securing the said father, and of the order of filiation:

5. They shall reduce their proceedings to writing, and subscribe the same.

5 H., 445; H. & D., 377; 3 J. R., 26; 19 W., 155.

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Costs to be
paid by per-
son adjudg-
ed reputed
father, and
bond to be
entered into

§ 14. Such person, so adjudged to be the reputed father, shall, upon notice of such order, immediately pay the amount so certified for the costs of apprehending him, and of the order of filiation; and shall enter into a bond to the people of this state, in such sum as such justices shall direct, with good and sufficient sureties, to be approved by them, with one or other of the following conditions: First, that such person will pay weekly, or otherwise, as shall have been ordered, such sum for the support of the said child, and for sustenance of its mother as aforesaid, as shall have been ordered, or shall at any time thereafter be ordered by the court of general sessions of the peace of the same county; and that he will fully and amply indemnify the county and town, or city, where the said bastard shall have been born, or where the woman likely to have such bastard shall be, and every other county, town or city, which may have incurred any expense, or may be put to any expense for the support of such child, or its mother, during her confinement and recovery therefrom, against all such expenses: Or, second, that such person will appear at the next court of general sessions of the peace of the said county, and not depart the said court, without its leave.

2 D., 129; 8 How. P. R., 343; 1 J. R., 486; 8 J. R., 323; 15 J. R., 208.

When fa-
ther to be
discharged;
when to be
committed.

§ 15. Upon such bond being executed to the satisfaction of the justices, they shall discharge such person from his arrest. But if he refuse or neglect to execute a bond with one of the conditions aforesaid, or to pay the costs and charges so certified, he shall be committed by such justices, or either of them, to the common jail of the city or county, by warrant, there to remain until discharged by the court of general sessions of the peace, or until he shall execute such bond, in the penalty which shall have been required by the justices.

2 D., 129.

Penalty of
certain
bonds.

§ 16. The penalty of every bond which shall be taken for the appearance of any such reputed father, either before justices of the peace, or at the court of general sessions, shall, in all cases, be such a sum, as shall be deemed a full idemnity, for the expense of supporting such bastard and its mother, as before provided.

27 B., 60.

§ 17. During such examination, and until such person shall be discharged by the justices aforesaid, he shall remain in custody of the constable who apprehended him, unless a bond shall have been taken for his appearance as herein provided; and when committed to any jail he shall be confined therein, without being let to bail, and without being entitled to the liberties thereof.

27 B., 60.

§ 18. When any bond taken out of the county as aforesaid, by which the person charged shall be bound to appear at the next court of general sessions of the peace, shall be returned to the justice who issued the warrant, such justice shall in like manner, call in the aid of another justice of the peace of the same county; and the said two justices shall proceed in manner aforesaid, to examine and determine who is the father of such bastard, or of such child likely to be born a bastard; and shall make an order of filiation, and prescribe the sum to be paid by such putative father, for the support of such child, and for the sustenance of the mother as aforesaid; and shall certify the reasonable costs of apprehending the said father, and of the order of filiation.

13 W., 597.

§ 19. Such examination and order may be made in the absence of the person so charged, unless before the same be made, he shall personally require of the justice issuing the warrant, that such examination be made in his presence; in which case, reasonable notice of the time and place of such examination shall be given to the person so charged. He may appear and offer testimony in relation to the matters to be inquired into, and the same proceedings shall be had, as in the case of the person so charged being brought before such justice.

§ 20. In making any examination hereby authorised, the justice, or justices, may compel the mother of a bastard so chargeable, or likely to become chargeable, or a woman pregnant with a child likely to be born a bastard and to become so chargeable, to testify and disclose the name of the father of such bastard or child; and in case of her refusal, may, after the expiration of one month from the time of her delivery, if she shall be sufficiently recovered, commit her to the common jail of the county, by a warrant under his hand, or the hands of such justices, in which the cause of commitment shall be distinctly set forth, there to remain until she shall testify and disclose the name of such father.

1 R. L., 309, § 7; 4 W., 555.

§ 21. If the mother of a bastard child, chargeable, or likely to become chargeable, as before declared, be possessed of any property in her own right, any two justices of the peace of the county where such mother may be, on the application of any county superintendent, or overseer of the poor, shall

TITLE 4.
Father how disposed of during examination, &c.

Proceedings in case of bond given out of the county.

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Examination in such case.

Mother of bastard, how compelled to testify.

Mother when compelled to support bastard.

TITLE 4.

they shall determine the sum to be paid by such putative father, for the sustenance of such mother during her confinement, and her recovery therefrom:

4. They shall certify the reasonable costs of apprehending and securing the said father, and of the order of filiation:

5. They shall reduce their proceedings to writing, and subscribe the same.

5 H., 445; H. & D., 377; 3 J. R., 26; 19 W., 155. \

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Costs to be paid by person adjudged reputed father, and bond to be entered into

§ 14. Such person, so adjudged to be the reputed father, shall, upon notice of such order, immediately pay the amount so certified for the costs of apprehending him, and of the order of filiation; and shall enter into a bond to the people of this state, in such sum as such justices shall direct, with good and sufficient sureties, to be approved by them, with one or other of the following conditions: First, that such person will pay weekly, or otherwise, as shall have been ordered, such sum for the support of the said child, and for sustenance of its mother as aforesaid, as shall have been ordered, or shall at any time thereafter be ordered by the court of general sessions of the peace of the same county; and that he will fully and amply indemnify the county and town, or city, where the said bastard shall have been born, or where the woman likely to have such bastard shall be, and every other county, town or city, which may have incurred any expense, or may be put to any expense for the support of such child, or its mother, during her confinement and recovery therefrom, against all such expenses: Or, second, that such person will appear at the next court of general sessions of the peace of the said county, and not depart the said court, without its leave.

2 D., 129; 8 How. P. R., 343; 1 J. R., 486; 8 J. R., 323; 15 J. R., 208.

When father to be discharged; when to be committed.

§ 15. Upon such bond being executed to the satisfaction of the justices, they shall discharge such person from his arrest. But if he refuse or neglect to execute a bond with one of the conditions aforesaid, or to pay the costs and charges so certified, he shall be committed by such justices, or either of them, to the common jail of the city or county, by warrant, there to remain until discharged by the court of general sessions of the peace, or until he shall execute such bond, in the penalty which shall have been required by the justices.

2 D., 129.

Penalty of certain bonds.

§ 16. The penalty of every bond which shall be taken for the appearance of any such reputed father, either before justices of the peace, or at the court of general sessions, shall, in all cases, be such a sum, as shall be deemed a full idemnity, for the expense of supporting such bastard and its mother, as before provided.

27 B., 60.

TITLE 4.
Father how
disposed of
during ex-
amination,
&c.

§ 17. During such examination, and until such person shall be discharged by the justices aforesaid, he shall remain in custody of the constable who apprehended him, unless a bond shall have been taken for his appearance as herein provided; and when committed to any jail he shall be confined therein, without being let to bail, and without being entitled to the liberties thereof.

27 B., 60.

Proceed-
ings in case
of bond giv-
en out of
the county.

§ 18. When any bond taken out of the county as aforesaid, by which the person charged shall be bound to appear at the next court of general sessions of the peace, shall be returned to the justice who issued the warrant, such justice shall in like manner, call in the aid of another justice of the peace of the same county; and the said two justices shall proceed in manner aforesaid, to examine and determine who is the father of such bastard, or of such child likely to be born a bastard; and shall make an order of filiation, and prescribe the sum to be paid by such putative father, for the support of such child, and for the sustenance of the mother as aforesaid; and shall certify the reasonable costs of apprehending the said father, and of the order of filiation.

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13 W., 597.

Examina-
tion in such
case.

§ 19. Such examination and order may be made in the absence of the person so charged, unless before the same be made, he shall personally require of the justice issuing the warrant, that such examination be made in his presence; in which case, reasonable notice of the time and place of such examination shall be given to the person so charged. He may appear and offer testimony in relation to the matters to be inquired into, and the same proceedings shall be had, as in the case of the person so charged being brought before such justice.

Mother of
bastard,
how com-
pelled to
testify.

§ 20. In making any examination hereby authorised, the justice, or justices, may compel the mother of a bastard so chargeable, or likely to become chargeable, or a woman pregnant with a child likely to be born a bastard and to become so chargeable, to testify and disclose the name of the father of such bastard or child; and in case of her refusal, may, after the expiration of one month from the time of her delivery, if she shall be sufficiently recovered, commit her to the common jail of the county, by a warrant under his hand, or the hands of such justices, in which the cause of commitment shall be distinctly set forth, there to remain until she shall testify and disclose the name of such father.

1 R. L., 309, § 7; 4 W., 555.

Mother
when com-
pelled to
support bas-
tard.

§ 21. If the mother of a bastard child, chargeable, or likely to become chargeable, as before declared, be possessed of any property in her own right, any two justices of the peace of the county where such mother may be, on the application of any county superintendent, or overseer of the poor, shall

TITLE 6.

examine into the matters, and in their discretion, make order for the keeping of such bastard, by charging such mother with the payment of money weekly, or other sustentation, for the support of such child, as they shall think meet.

1 R. L., 306, § 1.

Proceed-
ings in case
of refusal.

§ 22. If, after the service of such order, subscribed by the said justices, upon such mother, she shall refuse or neglect to perform the same, she shall be committed to the common jail of the county, there to remain, without bail; until she comply with such order, unless she shall execute a bond to the people of this state, in such sum as the said justices shall direct, with good and sufficient sureties, to appear at the then next court of general sessions of the peace, in the said county, and not to depart the said court, without its leave.

Amount or-
dered to be
paid may be
reduced or
increased.

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§ 23. The justices who shall have made any order of filiation or maintenance against the father or mother of any bastard, may from time to time vary the amount therein directed to be paid, by reducing the same as circumstances may require; and upon the application of any county superintendent or overseer of the poor interested therein, and after ten days' notice to be given to the party who may be affected thereby, the court of general sessions of the peace of the county, may increase the sum in and by such order directed to be paid for the support of any bastard; and the said court, on the application of any person affected by such order, and after the same notice to the superintendents or overseers at whose instance it was procured, may reduce the amount directed to be paid by any such order.

Appeals
from adju-
dications of
justices.

§ 24. Any person who shall think himself aggrieved by any order or determination of any two justices of the peace, made pursuant to any authority hereby given, may appeal therefrom to the next court of general sessions of the peace to be holden in the same county, excepting any person who shall have executed a bond, to perform any order of filiation and of settlement and to indemnify the public, who shall be concluded thereby, and shall not be permitted to appeal from any other part of such order, than such as fixes the weekly or other allowance to be paid. Whenever a bond shall be entered into by a person charged as the father of a bastard, or of a child likely to be born a bastard, or by the mother of a bastard, for his or her appearance at the next court of general sessions, the same shall be deemed an appeal from the order of filiation or sustentance, or both, as the case may be, and no further or other notice thereof shall be required. In other cases of appeal, notice shall be given to the justices making the order, and to the other party affected by such order, or to the superintendent or overseers at whose instance the same was obtained, at least ten days previously.

Bond for ap-
pearance to
be deemed
an appeal.

Notice in
other cases.

1 R. L., 309, § 9 & 10; 19 W., 155; 5 D., 98.

§ 25. No justice of the peace who shall have assisted in any judgment or in making any order appealed from, shall sit in the court of general sessions upon the hearing of any appeal, made from such judgment or order.

TITLE a.
Justice
making or-
der not to
sit on ap-
peal.

§ 26. The justices who shall have taken or received any bond for the appearance of any party at the general sessions, shall transmit the same to the clerk of the court before the opening thereof, together with the orders of maintenance and sustenance which shall have been made, or true copies thereof signed by the justices making the same.

Bonds, &c.,
when to be
filed in
clerk's of-
fice.

§ 27. Subpoenas shall be issued by the clerk of the court in vacation as well as in term, and be delivered to any party to such appeal, requiring the same: and obedience to such subpoenas shall be enforced, and the witnesses summoned may be compelled to testify, in the same manner as in criminal cases pending in such court.

Subpoenas
on appeals.

12 W., 274.

§ 28. The court to which such appeal may be made, shall proceed to hear the allegations and proofs of the respective parties, and the party in whose favor any order was made, which shall be the subject of appeal, shall be required to substantiate the same by evidence. If the mother of any bastard be dead or insane, the testimony given by her on her examination, shall be received in the same manner as if she were present and testified to the same.

Proceed-
ings on
hearing
appeal.

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1 R. L., 310, § 12; 7 W., 361; 15 B., 286.

§ 29. The court may affirm or quash any order of filiation or sustenance, or may reduce or increase the sum directed by any such order to be paid for the support of a bastard or for the sustenance of its mother; but no such order shall be quashed for any defects in the form thereof, but the same shall be amended by the said court according to the facts and justice of the case. If at the time of hearing such appeal the child supposed likely to be born a bastard, shall not be born, the court may adjourn such hearing from time to time, until such child be born, and shall take a recognizance from all parties bound to appear.

Court may
affirm,
quash or
vary order.

When hear-
ing may be
adjourned.

§ 30. If the woman so pregnant shall be married, before she be delivered of such child, or if she shall miscarry so that such child shall not be born alive, or if it shall appear that she is not so pregnant, then the person charged as the father of such child, shall be discharged from custody if imprisoned, or from his bond or recognizance, by the court of general sessions of the peace of the county, before whom such fact shall appear, or shall be immediately relieved out of custody, by warrant under the hands and seals of the justices by whom he was committed, upon such fact appearing to them.

In certain
cases father
to be dis-
charged.

1 R. L., 307, § 3.

§ 31. If, upon such hearing, the court of general sessions of the peace affirm the order of filiation, by which any person

On affirm-
ance of or-
der of filia-

TITLE 6.
tion, father
to give
bond.

shall be determined to be the father of a bastard, or a child likely to become a bastard, the said court shall require such person immediately to enter into a bond to the people of this state, in such sum as it shall prescribe, with good and sufficient sureties, conditioned that such person shall pay weekly or otherwise, as shall have been directed by the order of filiation and sustenance, such sum for the support of such bastard or child, and for the sustenance of its mother during her confinement and recovery therefrom, as shall have been so ordered by two justices of the peace or as the same shall have been or thereafter shall be, modified by the court of general sessions of the peace, and that he will fully and amply indemnify the county and town, or the county and city, where the said bastard shall have been born, or where the woman likely to have such bastard shall be, and every other county, town or city, which may have incurred any expense, or which may be put to any expense, for the support of such child or its mother, during her confinement and recovery therefrom.

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Consequences of neglect.

§ 32. If any person against whom such order shall be affirmed, shall refuse or neglect to execute such bond, with such sureties, to the satisfaction of the said court, he shall be committed to the common jail of the county by an order of such court, there to remain until he shall execute such bond or be discharged by the said court.

Bond for appearance, when forfeited.

§ 33. If any person bound to appear at any court of general sessions, on the charge of being the father of a bastard, or of a child likely to be born a bastard, shall depart the said court without executing the bond it may require, or without being discharged by the said court from the bond executed by such person for his appearance, the said bond shall be thereby deemed to be forfeited, and may be prosecuted as herein after directed.

Proceedings in respect to mother bound to appear, &c.

§ 34. Where the mother of any bastard shall be bound to appear at any court of general sessions, to answer on account of any order made against her, for the support of such bastard, or shall be committed for neglect or refusal to enter into such bond, the court shall examine into the matter, compel the attendance of witnesses, and hear the allegations and proofs of the parties, in the same manner as herein before directed in the case of an appeal.

Court may affirm, vary or discharge order.

§ 35. If the court shall be satisfied that such mother has property in her own right, so as to be able to support such bastard or contribute to its support, it shall confirm the order made for that purpose, and may in its discretion, vary the amount ordered to be paid weekly or otherwise. If not so satisfied, the court shall discharge such woman from her bond, and if in custody, from her imprisonment.

Proceedings on affirming order.

§ 36. If the court affirm such order, it shall require the said mother to execute a bond, in such sum as it shall prescribe, with sufficient sureties, to the people of this state, conditioned that such mother will faithfully comply with and obey the

order for the support of such bastard, so made and affirmed, as the same shall have been modified, or may thereafter be modified by the court of general sessions of the peace. If she shall refuse or neglect to execute such bond, she shall be committed, by an order of the said court, to the common jail of the county, there to remain until she shall execute such bond, or until she shall be discharged by the court.

§ 37. The court shall award costs to the party in whose favor any such appeal shall be determined, and to any party to whom notice of appeal shall be given and not prosecuted. When awarded against any county superintendents, or overseers of the poor of any town not liable for the support of its own poor, the amount shall be paid by the county treasurer, on the production of a certified copy of the order, and of the taxed bill of such costs, and shall be by him charged to the town which shall be bound to support such bastard, if any town in the same county be so liable, and if there be no town so liable, then to be charged to the county.

Costs on appeal.

12 W., 273.

§ 38. In other cases, the payment of such costs may be enforced by rule and attachment of the same court, or by an action founded on the order for their payment. If the party against whom costs are awarded, reside out of the jurisdiction of the court of general sessions, an action may be brought on such order by the party entitled to such costs, in which the production of a certified copy of the order, and of a taxed bill of the costs, shall be sufficient evidence.

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Costs on appeal.

1 R. L., 310, § 11.

§ 39. If the court of general sessions quash any order of filiation and maintenance, for any other reason than upon the merits and facts, such court shall proceed and make an original order of filiation, in the same manner as any two justices of the peace may, by law; or such court shall bind over the person charged, to appear at the next general sessions.

When court may make original order of filiation.

§ 40. In case of any order being quashed, for any other reason than on the merits, and the person charged being bound over as aforesaid, the same proceedings may be had by the justices of the peace for the apprehension of the person charged as father of a bastard, or of a child likely to be born a bastard, and for the making of an order of filiation and maintenance, and for the commitment of such person in default of executing any bond required by law, as are herein authorised in the first instance. And the same proceedings shall be subsequently had in all respects.

Proceedings when order quashed for informality.

§ 41. Whenever any person shall be committed to prison charged as the father of a bastard, or of a child likely to be born a bastard, and whenever any mother of a bastard shall be so committed, for their default in not executing a bond to support such child, or to indemnify the public, it shall be the duty of the court of general sessions of the peace of the

When father or mother imprisoned, duty of court.

TITLE 6.

county, to inquire from time to time into the circumstances and ability of such father or mother to support such bastard, or to procure sureties to be bound with either of them.

When to be discharged.

§ 42. If the court shall at any time be satisfied that such father or mother is wholly unable to support such child, or to contribute to its support, or to procure sureties to be bound with either of them, the said court may, in its discretion, order such father or mother to be discharged from such imprisonment.

Certain notice before discharge, to be given.

§ 43. Before any order for such discharge shall be entered, the court shall be satisfied, that reasonable notice has been given to the overseers of the poor, or the county superintendents, at whose instance such father or mother may have been committed, of the intention to apply for such discharge, and shall hear the allegations and proofs of the said superintendents or overseers, and may examine such father or mother on oath, in relation to their circumstances.

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Insolvent acts, &c., not to apply to persons imprisoned under this title.

§ 44. Whenever a father or mother shall be lawfully committed for the causes in the last section specified, or either of them, he or she shall not be discharged from imprisonment under or by virtue of any insolvent act, or other act for the relief or discharge of imprisoned debtors, or in any other way, until discharged by the court of general sessions of the peace of the county.

Bonds for appearance to be signed; to be transmitted to court.

§ 45. The bonds taken by any justice or justices of the peace, for the appearance of any person charged as the father of a bastard, or of a child likely to be born a bastard, or for the appearance of any mother of a bastard child, at any court of general sessions of the peace, shall be signed by the persons binding themselves as principal and sureties, and shall be transmitted by the justice taking the same, or receiving the same from any constable as herein provided, to the said court, at the opening of the next term thereof.

How to be prosecuted, &c.

§ 46. If any default shall be made, by which such bond shall become forfeited, the court shall cause the same to be prosecuted by the district attorney of the county, and the penalty thereof shall be recovered, and when collected, shall be paid to the county treasurer, to be by him credited to the town liable for the support of the bastard, if there be any such town in the county, and if there be none, then to be credited to the county.

Prosecution of bonds to support bastards.

§ 47. Whenever a bond shall be taken to perform any order that may be made in relation to the support of any bastard, or of any child likely to be born a bastard, or for the sustenance of its mother, and any breach shall happen in the condition thereof, the same may be prosecuted in the name of the people of this state, by the county superintendents of the county, or the overseers of the poor of the town, which was liable for the support of such bastard or child, or which may have incurred any expense in the support of such bastard or

child, or in the sustenance of its mother during her confinement and recovery therefrom.

4 S. S. C., 466.

§ 48. In such action, the breaches of the condition shall be assigned as in actions brought on bonds with condition other than for the payment of money, and the same proceedings shall be had in all respects. It shall not be necessary to prove the actual payment of money by any county superintendent, overseer of the poor, or other person, but the neglect to pay any sum which shall have been ordered to be paid by any competent authority, for the support of the child, or the sustenance of its mother, shall be deemed a breach of the condition of such bond, and the amount of damages to be assessed in such case, shall be the sum which was so ordered to be paid, and which was withheld up to the time of the commencement of such suit, with interest thereon.

8 W., 520; 3 W., 526.

§ 49. For any breaches of the condition of such bond which shall happen after the recovery of any damages, or the commencement of any suit, a *scire facias* may be issued, and the same proceedings had, as in actions brought on bonds with conditions other than for the payment of money. All monies which shall be collected upon any such bond, shall be paid to the county treasurer, and by him credited to the town liable for the support of such bastard, if there be any such town in the county, and if there be none, then to be credited to the county.

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Subsequent breaches: application of recovery.

§ 50. If in any such suit upon a bond, in the name of the people, the same shall be discontinued, or non-prossed, or judgment shall pass for the defendant on verdict, demurrer or otherwise, the relators, and their successors in office, shall be liable to pay such costs as the court shall award; which payment may be enforced by rule and attachment of the court, and shall be reimbursed by the county treasurer, and be by him charged to the town liable for the support of such bastard, if there be any such town in the same county, and if there be none, to the county.

Costs on judgment for defendant; how collected.

§ 51. An action may be maintained by the county superintendents of the county, or by the overseers of the poor of the town, which may be liable for the support of any bastard, or child likely to be born a bastard, or which may have incurred any expense, or be liable to any expense, in the support of such child or the sustenance of its mother, upon any order that may be made by any two justices of the peace, or by a court of general sessions, for the payment of a sum weekly, or otherwise, for such support or sustenance, notwithstanding a bond may have been executed to comply with such order, and to indemnify any such county or town; and in case of the death of the person against whom such order was made, an action may also be maintained on such order against his

Giving of bond not to prevent actions for expense of bastards, &c.

May be brought against executors, &c.

Proceedings thereon; what to be deemed a breach.

TITLE 6.

executors or administrators. But when a bond is entered into, to appear at the next general sessions of the peace, no action shall be brought on any such order, until the same shall have been affirmed by the said general sessions.

Proceedings against father or mother of bastard, absconding, &c.

§ 52. If the putative father or mother of any bastard, or of any child likely to be born a bastard, and to become chargeable, shall run away from the place of their ordinary residence, leaving such bastard or child chargeable, or likely to become chargeable to the public, the overseers of the poor of the town, or the superintendents of the poor of the county, where any such bastard shall be born or be likely to be born, may apply to any two justices of the peace of the county where any estate, real or personal, of the putative father or mother of such bastard shall be, for authority to seize and take such real and personal estate. Upon due proof being made, to the satisfaction of such justices, of the said facts, they shall issue their warrant, in the same manner as is provided in the first Title of this Chapter, in relation to parents absconding and leaving their children chargeable; and the same proceedings, in all respects, shall be had thereon, and the overseers and superintendents shall account to the general sessions, in the manner therein provided.

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1 R. L., 309, § 8.

Mother and bastard, how to be supported.

§ 53. The mother of every bastard, who shall be unable to support herself during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other paupers are required to be supported by law, at the expense of the town where such bastard shall be born, if the mother have a legal settlement in such town, and it be required to support its own poor; if the mother have a settlement in any town of the same county, which is required to support its own poor, then at the expense of such town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.

Mother not to be removed without her consent.

§ 54. Such mother and her child shall not be removed from any town to any other town in the same county, nor from one county to any other county, in any case whatever, unless voluntarily taken to the county or town liable for their support, by the county superintendents of such county or the overseers of the poor of such town.

When overseers to notify superintendents of cases of bastardy.

§ 55. The overseers of the poor of any town where a woman shall be pregnant of a child likely to be born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them.

Superintendents to support mother and child.

§ 56. The county superintendents shall provide for the support of such bastard and its mother, in the same manner as for the poor of such county.

§ 57. Until the county superintendents take charge of and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a pauper chargeable to the county, who can not be conveniently removed to the county poor-house.

TITLE 4.
Until they
do so, duty
of overseers

§ 58. Where a woman shall be pregnant of a child likely to be born a bastard, or to become chargeable to a town, or where a bastard shall be born chargeable, or likely to become chargeable to a town, the overseers of the poor of the town where such bastard shall be born, or be likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother, during her confinement and recovery therefrom, in the same manner as they are authorised by law to provide for and support the poor of their town.

Mother and
bastard to
be supported
by over-
seers
whether
chargeable
to town or
not.

§ 59. Where any money shall be paid to any overseers, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard, the said overseers may expend the same directly in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury. They shall annually account, on oath, to the board of town auditors, at the same time that other town officers are required to account, for expenditures of all monies so received by them, and shall pay over the balance in their hands, to their successors in office, at the same time, and under the like penalties, as are provided by law, in respect to the poor monies in their hands.

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Money re-
ceived from
parents of
bastard,
how to be
applied:
how to be
accounted
for.

§ 60. All monies which shall be ordered to be paid by the putative father, or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall, within fifteen days after the receipt of any such monies, pay the same into the county treasury. Upon neglect of any of the said officers to make such payment, they shall be liable to an action by and in the name of the county treasurer, for all monies so received and withheld, with interest from the time of the receipt, at the rate of ten dollars upon the hundred dollars; and shall forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county treasurer.

When re-
ceived on
account of
bastard
chargeable
to county,
how to be
disposed of.

§ 61. Whenever any dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any town, the same shall be determined by the board of county superintendents of the poor, upon a hearing of the parties interested, in the same manner as they are authorised to determine the settlement of any poor person.

Settlement
of bastards,
how deter-
mined.

§ 62. Where a bastard shall be born, or be likely to be born in one town, when the legal settlement of the mother is in

Proceed-
ings for
that pur-
pose.

TITLE 4.

executors or administrators. But when a bond is entered into, to appear at the next general sessions of the peace, no action shall be brought on any such order, until the same shall have been affirmed by the said general sessions.

Proceed-
ings against
father or
mother of
bastard,
absconding,
&c.

§ 52. If the putative father or mother of any bastard, or of any child likely to be born a bastard, and to become chargeable, shall run away from the place of their ordinary residence, leaving such bastard or child chargeable, or likely to become chargeable to the public, the overseers of the poor of the town, or the superintendents of the poor of the county, where any such bastard shall be born or be likely to be born, may apply to any two justices of the peace of the county where any estate, real or personal, of the putative father or mother of such bastard shall be, for authority to seize and take such real and personal estate. Upon due proof being made, to the satisfaction of such justices, of the said facts, they shall issue their warrant, in the same manner as is provided in the first Title of this Chapter, in relation to parents absconding and leaving their children chargeable; and the same proceedings, in all respects, shall be had thereon, and the overseers and superintendents shall account to the general sessions, in the manner therein provided.

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1 R. L., 309, § 8.

Mother and
bastard,
how to be
supported.

§ 53. The mother of every bastard, who shall be unable to support herself during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other paupers are required to be supported by law, at the expense of the town where such bastard shall be born, if the mother have a legal settlement in such town, and it be required to support its own poor; if the mother have a settlement in any town of the same county, which is required to support its own poor, then at the expense of such town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.

Mother not
to be re-
moved
without her
consent.

§ 54. Such mother and her child shall not be removed from any town to any other town in the same county, nor from one county to any other county, in any case whatever, unless voluntarily taken to the county or town liable for their support, by the county superintendents of such county or the overseers of the poor of such town.

When over-
seers to
notify su-
perintend-
ents of
cases of
bastardy.

§ 55. The overseers of the poor of any town where a woman shall be pregnant of a child likely to be born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them.

Superin-
tendents to
support
mother and
child.

§ 56. The county superintendents shall provide for the support of such bastard and its mother, in the same manner as for the poor of such county.

§ 57. Until the county superintendents take charge of and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a pauper chargeable to the county, who can not be conveniently removed to the county poor-house.

TITLE 4.
Until they
do so, duty
of overseers

§ 58. Where a woman shall be pregnant of a child likely to be born a bastard, or to become chargeable to a town, or where a bastard shall be born chargeable, or likely to become chargeable to a town, the overseers of the poor of the town where such bastard shall be born, or be likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother, during her confinement and recovery therefrom, in the same manner as they are authorised by law to provide for and support the poor of their town.

Mother and
bastard to
be supported
by over-
seers
whether
chargeable
to town or
not.

§ 59. Where any money shall be paid to any overseers, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard, the said overseers may expend the same directly in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury. They shall annually account, on oath, to the board of town auditors, at the same time that other town officers are required to account, for expenditures of all monies so received by them, and shall pay over the balance in their hands, to their successors in office, at the same time, and under the like penalties, as are provided by law, in respect to the poor monies in their hands.

(654)

Money re-
ceived from
parents of
bastard,
how to be
applied;
how to be
accounted
for.

§ 60. All monies which shall be ordered to be paid by the putative father, or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall, within fifteen days after the receipt of any such monies, pay the same into the county treasury. Upon neglect of any of the said officers to make such payment, they shall be liable to an action by and in the name of the county treasurer, for all monies so received and withheld, with interest from the time of the receipt, at the rate of ten dollars upon the hundred dollars; and shall forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county treasurer.

When re-
ceived on
account of
bastard
chargeable
to county,
how to be
disposed of.

§ 61. Whenever any dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any town, the same shall be determined by the board of county superintendents of the poor, upon a hearing of the parties interested, in the same manner as they are authorised to determine the settlement of any poor person.

Settlement
of bastards,
how deter-
mined.

§ 62. Where a bastard shall be born, or be likely to be born in one town, when the legal settlement of the mother is in

Proceed-
ings for
that pur-
pose.

TITLE 6.

another town of the same county, which is required by law to support its own poor, the overseers of the poor of the town where such bastard shall be born, or be likely to be born, shall give the like notice to the overseers of the town where the mother's settlement may be, as is required in the case of a person becoming a pauper, under the like circumstances; and the same proceedings shall be had in all respects, to determine the liability of such town, as in the case of paupers.

Proceedings.

§ 63. The overseers of the town to which the mother of such bastard belongs, may, before the confinement of such mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

1b.

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§ 64. If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town to which the mother belongs, shall be liable to pay all the expenses of the support of such bastard, and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, shall be assessed, together with the lawful interest on the monies expended, on the town to which such mother belongs, and shall be collected in the same manner as provided for poor persons supported under the same circumstances; and the monies so collected, shall be paid to the county treasurer, for the benefit, and to be credited to the town which incurred the said expenses.

Order of justice to fix sum to be expended for bastards, &c., in certain cases.

§ 65. In those cases where any town is required to support a bastard and its mother, whether the mother have a settlement in such town or not, and no monies shall be received from the putative father, or from the mother, to defray the expense of such support, the overseers of the poor shall apply to a justice of the peace, and obtain an order for the support of such bastard, and the sustenance of its mother, during her confinement and recovery therefrom, and the sum to be allowed therefor, in the same manner as is required in the case of paupers; and the monies paid, or contracted to be paid, by the overseer, pursuant to such order, shall be paid by the county treasurer, in the same manner as for paupers, and be charged to the town to whose officers such payment shall be made.

When bastard and mother to be removed to county poor house;

§ 66. If there be a county poor-house, or other place provided for the reception of the poor, in any county where the towns are required to support their own poor, the overseers of the poor of a town where a bastard shall be born, or shall be likely to be born, may, with the approbation of the county superintendents, or any two of them, and when the situation of the mother will allow it, remove the mother of such bastard, with her child, to such poor-house, or other place, in the same manner as paupers may be removed; the expense of which shall be defrayed in the like manner, and such mother and her child shall be considered as poor of the town so liable for

How supported there.

TITLE 7.

their support, and the expense shall in like manner be estimated and paid.

§ 67. Any superintendents of county poor, and any overseer of the poor of any town, whose duty it shall be to provide for the support of any bastard and the sustenance of its mother, who shall neglect to perform such duty, shall be deemed guilty of a misdemeanor; and shall, on conviction, be liable to a fine not exceeding two hundred and fifty dollars, or to imprisonment not exceeding one year, or to both.

Penalty on superintendents and overseers for neglect.

§ 68. The commissioners of the alms-house and bridewell of the city of New-York, or any two of them, may make such compromise and arrangements with the putative fathers of bastard children in the said city, relative to the support of such children, as they shall deem equitable and just, and thereupon may discharge such putative fathers from all liability for the support of such bastards.

Compromise with putative fathers in New York.

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Laws of 1815, 163.

§ 69. Every constable or other officer, to whom any bond of the putative father of a bastard, or of a child likely to be born a bastard, taken out of the county where the warrant was issued, shall be delivered as herein before directed, who shall neglect or refuse to deliver the same to the justice who issued such warrant, within fifteen days after the receipt of the same, shall forfeit the sum of twenty-five dollars, to be sued for and recovered by and in the name of any overseers of the poor, or county superintendents, at whose instance the said warrant was issued.

Penalty on constables neglecting to deliver over bonds received by them.

1 R. L., 307, § 4; 25 W., 620.

§ 70. No justice of the peace shall be liable to any information, indictment, action of trespass, or other action, by reason of his having endorsed any warrant issued for the apprehension of the putative father of a bastard, or of a child likely to be born a bastard, although it should afterwards appear that such warrant was illegally or improperly issued.

Justice endorsing warrant under this Title, not liable.

§ 71. If any justice who shall have issued any warrant for the apprehension of the father of a bastard, or of a child likely to be born a bastard, shall have died, vacated his office, or be absent on the return of such warrant, the constable who may apprehend such father, shall carry him before some other justice of the same town, who shall have the same authority to proceed therein, as the justice who issued such warrant.

Proceedings in case of death, &c., of justice issuing warrant.

See Laws of 1832, ch. 26; 1838, ch. 202; 1828, ch. 6.

TITLE VII.

OF THE IMPORTATION INTO THIS STATE OF PERSONS HELD IN SLAVERY, OF THEIR EXPORTATION, OF THEIR SERVICES, AND PROHIBITING THEIR SALE.

- SEC. 1. Persons held as slaves not to be brought into this state.
 2. Last section not to discharge fugitives from other states.
 3 to 7. (Repealed.)

TITLE 7.

SEC. 8. Penalty for selling any person as a slave.

9. Persons so sold discharged from service.

10. Persons imported since certain time, not to be transferred for any time.

11. Contracts for service by slaves, void.

12. Penalty for sending out of the state, slaves or servants.

13. Last section not to apply to slaves or servants pardoned by governor.

14. Inhabitants may take servants on a journey; duty on their return.

15. Persons of color escaping into this state in a vessel, how returned.

16. Every person born in this state, or brought into it, free.

Persons held in slavery not to be brought into this state.

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§ 1. No person held as a slave shall be imported, introduced or brought into this state, on any pretence whatever, except in the cases hereinafter specified. Every such person shall be free. Every person held as a slave who hath been introduced or brought into this state contrary to the laws in force at the time, shall be free.

Laws of 1817, 136, § 9; 20 N. Y., 601; 5 S. S. C., 681; 26 B., 272.

Fugitives from other states.

§ 2. The preceding section shall not be deemed to discharge from service any person held in slavery in any state of the United States, under the laws thereof, who shall escape into this state.

Sec. 3, 4, 5, 6, 7, repealed by Laws of 1841, ch. 247.

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Penalty for selling any person as a slave.

§ 8. No person shall under any colour or pretext whatever, sell any other person as a slave; and whoever shall offend against this provision shall be deemed guilty of a misdemeanor, and on conviction, shall be subject to a fine not exceeding two thousand dollars, or to imprisonment in the county jail, not exceeding three years, or to imprisonment in a state prison not exceeding fourteen years.

Laws of 1817, 137, § 10.

Persons sold discharged from all service.

§ 9. If the person so sold as a slave, be at the time held in slavery, or in any manner bound to service, to the individual selling him, or with whose consent or knowledge he shall be sold, he shall thereupon, by the fact of such sale, become emancipated and discharged from all obligations of service.

Certain persons imported not to be transferred.

§ 10. No person who hath been imported or brought into this state as a slave since the eighth day of April, in the year one thousand eight hundred and one, shall be transferred for any term of time; and every person transferred shall be free from all obligations of service to the individual transferring him, or with whose knowledge he shall be transferred.

Certain contracts for service, void.

§ 11. Every indenture, bond or contract, for personal service, made since the thirtieth day of March, one thousand eight hundred and ten, or which shall hereafter be made or entered into, by any person, who has been held or possessed as a slave without this state, shall be utterly void; and all such contracts made by any person who has been held as a slave within this state, shall also be void.

Laws of 1810, 33, § 2; 1817, 138, § 11.

Penalty for sending slaves or

§ 12. No person shall send, export or carry out of this state, any person who hath been held as a slave, or as a servant for

TITLE 7.
servants
out of the
state.

a term of years, in consequence of his having been born of a person held in slavery, except as herein provided; and whoever shall offend against this provision, or shall attempt to send, export or carry out of this state, any such slave or such servant, or be aiding and consenting to such exportation or attempt, except as aforesaid, shall be deemed guilty of a misdemeanor, and every person so exported, or attempted to be exported, shall be free, and discharged from all obligations of service to the individual so exporting him, or with whose knowledge or privity he shall be so exported.

§ 13. The provisions in the preceding section, shall not be applicable to any slave or servant who shall be pardoned by the executive on condition of leaving this state.

Laws of 1819, 172, § 1.

§ 14. Any inhabitant of this state, going a journey to any other part of the United States, may carry with him any person by him lawfully held to service as aforesaid. Such inhabitant, on his own return to this state, shall bring back with him every person so carried away by him; and in default thereof he shall be deemed guilty of a misdemeanor, unless it shall appear that within one month after such return, he filed with the clerk of the city or town in which he resides, a certificate signed by a judge of the county courts of the county, or by the mayor or recorder of the city, stating that it hath satisfactorily appeared to such officer, by the oath of such inhabitant or otherwise, that the person held to service and not brought back as aforesaid, could not be brought back as herein required, by reason of some unavoidable accident.

Laws of 1817, 140, § 15.

§ 15. Whenever any person of colour, owing service or labor in any other state of the United States, shall secrete himself on board of a vessel lying in any port or harbor of such state, and shall be brought into this state in such vessel, the captain or commander thereof, or his agent, may seize such person of colour, and take him before the mayor or recorder of the city of New-York. The officer before whom such person shall be brought, shall inquire into the circumstances, and if it appear, upon proper testimony, that such person of colour owes service or labor in any other state, and that he did secrete himself on board of such vessel, without the knowledge or consent of the captain or commander thereof, and that by so doing, he subjected such captain to any penalty, such officer shall furnish a certificate thereof, to such captain or commander, which shall be a sufficient warrant to him, to carry or send such person of colour, to the port or place from which he was so brought as aforesaid.

Laws of 1817, 143, § 30.

§ 16. Every person born within this state, whether white or coloured, is FREE; every person who shall hereafter be born within this state, shall be FREE; and every person brought

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Certain in-
habitants
may take
servants
with them.
Proof to be
made on
their re-
turn.

Persons of
color invol-
untarily
brought
into this
state may
be return-
ed; pro-
ceedings.

Persons
born in this
state, &c.,
free.

TITLE 2

into this state as a slave, except as authorised by this Title, shall be FREE.

20 N. Y., 601; 26 B., 272.

TITLE VIII.

OF THE PREVENTION AND PUNISHMENT OF IMMORALITY AND DISORDERLY PRACTICES.

ART. 1. — Of jugglers and the exhibition of shows, &c.

ART. 2. — Of disorderly practices on public occasions and holidays, and in taverns, vessels and canal boats.

ART. 3. — Of betting and gaming.

ART. 4. — Of raffling and lotteries.

ART. 5. — Of the racing of animals.

ART. 6. — Of profane cursing and swearing.

ART. 7. — Of the disturbance of religious meetings.

[660] ART. 8. — Of the observance of Sunday.

ART. 9. — General provisions to enforce the prohibitions of the three last Articles.

ARTICLE FIRST.

OF JUGGLERS, AND THE EXHIBITION OF SHOWS, &c.

SEC. 1. Puppet-shows, &c. not to be performed or allowed; penalty.

2. Same penalty for exhibiting paintings, animals, &c. without license.

Penalty for performing puppet shows, &c., or allowing them to be performed.

§ 1. No person shall exhibit or perform for gain or profit, any puppet-show, any wire or rope-dance, or any other idle shows, acts or feats which common showmen, mountebanks or jugglers usually practice or perform; and no owner or occupant of any house, out-house, yard, field, shed or other place, shall furnish or allow the same to be used for the accommodation of such exhibition or performance. Whoever shall offend against either of these provisions, shall forfeit twenty-five dollars for each offence, to be recovered by and in the name of the overseers of the poor of the town where the offence shall be committed.

Laws of 1819, 240, § 1 & 2; 13 B., 628; 12 W., 384.

Ib. for exhibiting paintings, animals, &c., without license.

§ 2. The penalties in the preceding section shall also apply to and be recovered of any person who shall exhibit for gain or profit any painting, any animal or other natural or artificial curiosity, or any other thing not prohibited in the foregoing section, in any town, without having first obtained permission in writing for that purpose, signed by two justices of the peace of the town, in which license the nature of such exhibition shall be described, and for the granting of which no fee or reward shall be taken.

ARTICLE SECOND.

OF DISORDERLY PRACTICES ON PUBLIC OCCASIONS AND HOLIDAYS, AND IN TAVERNS, VESSELS AND CANAL BOATS.

SEC. 3. Penalty for discharging fire-arms, &c. on certain days.

4. Gaming tables prohibited.

5. Public officers to destroy such tables.

SEC. 6. Gaming, &c. in taverns, vessels and packets, prohibited.

7. Penalties, and how collected.

ART. 2

§ 3. No person shall fire or discharge any gun, pistol, rocket, squib, cracker, or other fire-work, within a quarter of a mile of any building, on the twenty-fifth day of December, on the last day of December, on the first day of January, or on the twenty-second day of February, in any year; nor on the fourth day of July, or such other day as shall at the time be celebrated as the anniversary of American independence, without the order of some officer of the militia, while in the course of military exercises: every person offending against these provisions, shall forfeit the sum of five dollars to be recovered by any person who will prosecute in the name of the overseers of the poor, with their consent and under their direction, for the use of the poor.

Discharge of fire-arms, &c., on certain days, prohibited.

1 R. L., 49.

§ 4. On the day of any militia parade or rendezvous, or of any town-meeting, or of any annual or special election, or on the day of the assembling of any inhabitants of this state to celebrate the anniversary of American independence, no person shall expose to the public, or have in his possession within half a mile of the place of such parade, rendezvous, town-meeting, election or celebration, any eo-table, wheel of fortune, or other gaming table, or gaming machine or box; every person offending against this provision, shall forfeit twenty-five dollars, to be recovered by and in the name of the overseers of the poor of the town where the offence was committed, for the use of the poor.

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Gaming tables at parades, elections, &c., prohibited.

Laws of 1815, 70.

§ 5. It shall be the duty of all sheriffs and of all other executive, judicial or ministerial officers concerned in the administration of justice, to break, burn or otherwise destroy, every such table, box and machine, so exposed or possessed contrary to the provisions of the last foregoing section.

To be destroyed.

§ 6. There shall not be allowed or suffered any cock-fighting, playing with cards or dice, or any kind of gaming by lot or chance, within any house kept as a public inn or tavern, or in any grocery, or other place where spirituous liquors shall be licensed to be sold, nor shall there be any playing with cards or dice for gain or money, or any kind of gaming by lot or chance, on board any vessel used for the transportation of passengers, or on board any packet or other boat employed in the conveyance of passengers on any canal; nor shall any billiard table or other gaming table, be kept on board such vessel or boat, or within such house or place, or in any out-house, yard or garden belonging to such house or place.

Gaming, &c., in taverns and vessels, prohibited.

1 R. L., 178, § 8; Laws of 1816, 243, § 2; 13 J. R., 84.

§ 7. The master of any vessel or boat, and the keeper of any inn, tavern, grocery or other place where spirituous liquors are licensed to be sold, who shall offend against either

Penalties.

TITLE 3.

How collected.

of the provisions of the last section, shall forfeit ten dollars for each offence, to be recovered by and in the name of the overseers of the poor of the town where any such offence shall be committed by the keeper of an inn, tavern, grocery or other place before mentioned, and by and in the name of the overseers of the poor of any town where the offence shall be committed by any master of a vessel or boat.

ARTICLE THIRD.

OF BETTING AND GAMING.

- SEC. 8. All wagers unlawful; all contracts on account of wagers, void.
9. Money and property wagered, may be recovered.
 10. Two last sections not to extend to certain insurances.
 11. Cheating at games, a misdemeanor.
 12. Winners at any game, to forfeit five times the value won.
 13. Winning or losing \$25 within twenty-four hours, a misdemeanor.
 14. Persons losing at any sitting \$25, may recover it back.
 15. May be recovered by overseers of the poor.
 16. Securities for money lost at gaming, void.
 17. If such securities affect real estate, to enure to heir of grantor, &c.
 18. Persons betting, playing, &c., competent witnesses.
 19. Persons liable to suit, may be compelled to answer bills of discovery.
 20. Answer not to be testimony against such persons.
 21. Witnesses may be discharged from penalties of this Title.

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All wagers unlawful, &c.

§ 8. All wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, shall be unlawful. All contracts for or on account of any money or property, or thing in action so wagered, bet or staked, shall be void.

1 R. L., 223, § 5; 19 N. Y., 27; 1 N. Y., 395; 22 B., 38; 6 B., 660; 4 B., 529; 5 D., 365; 3 D., 105, 342; 1 D., 172; 8 Cow., 141; 5 W., 250; 2 S. S. C., 439; 1 How. P. R., 85; 2 E. D. S., 291.

Property staked may be recovered.

§ 9. Any person who shall pay, deliver or deposit any money, property or thing in action, upon the event of any wager or bet herein prohibited, may sue for and recover the same of the winner or person to whom the same shall be paid or delivered, and of the stakeholder or other person in whose hands shall be deposited any such wager, bet or stake, or any part thereof, whether the same shall have been paid over by such stakeholder or not, and whether any such wager be lost or not.

20 N. Y., 12; 15 N. Y., 527; 22 B., 82; 13 B., 556; 9 B., 815; 4 B., 529; 3 D., 103, 107; 1 D., 558; 7 Cow., 496; 10 J. R., 468.

Two last sections qualified.

§ 10. The two last sections shall not be extended so as to prohibit or in any way affect any insurances made in good faith for the security or indemnity of the party insured, and which are not otherwise prohibited by law; nor to any contract on bottomry or respondentia.

22 B., 38; 23 B., 151; 3 D., 105.

Penalty for cheating at games.

§ 11. Any person who shall, by any fraud or unlawful device or ill practice whatsoever, while playing at any game, or while

bearing a share in the wagers played for, or while betting on the sides or hands of such as play, win or acquire to himself or to any other, any sum of money or other valuable thing, shall be guilty of a misdemeanor, and on conviction shall be deemed infamous.

1 R. L., 153, § 5.

§ 12. Every person who shall, at any one time or sitting, win by playing at any game, of any one or more persons, any sum or value, shall forfeit five times the value of the money or other things so won, to be recovered by and in the name of the overseers of the poor of the town, for the use of the poor.

Winner to forfeit five times the sum won.

§ 13. Every person who shall win or lose at play, or by betting at any time, the sum or value of twenty-five dollars or upwards, within the space of twenty-four hours, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five times the value or sum so lost or won; which after deducting such reasonable charges of the prosecutor and witnesses as the court shall allow, shall be paid to the overseers of the poor of the town where the offence was committed, for the benefit of the poor.

Penalty for winning or losing \$25.

1 R. L., 153, § 6.

§ 14. Every person who shall, by playing at any game, or by betting on the sides or hands of such as do play, lose at any time or sitting, the sum or value of twenty-five dollars or upwards, and shall pay or deliver the same or any part thereof may, within three calendar months after such payment or delivery, sue for and recover the money or value of the things so lost and paid or delivered, from the winner thereof.

Losers of certain sums may recover them back. [663]

1 R. L., 153, § 2; 19 N. Y., 27; 13 J. R., 88; 4 J. R., 193.

§ 15. In case the person losing such sum or value shall not, within the time aforesaid, in good faith and without collusion, sue for the sum or value so by him lost and paid or delivered, and prosecute such suit to effect without unreasonable delay, the overseers of the poor of the town where the offence was committed, may sue for and recover the sum or value so lost and paid, together with treble the said sum or value, from the winner thereof, for the benefit of the poor.

When to be collected by overseers of poor.

§ 16. All things in action, judgments, mortgages, conveyances, and every other security whatsoever, given or executed, by any person, where the whole or any part of the consideration of the same shall be for any money or other valuable thing won by playing at any game whatsoever, or won by betting on the hands or sides of such as do play at any game, or where the same shall be made for the repaying any money knowingly lent or advanced for the purpose of such gaming or betting aforesaid, or lent or advanced at the time and place of such play, to any person so gaming or betting aforesaid, or to any person who, during such play, shall play or bet,

Securities for money lost at gaming void, &c.

TITLE 8

shall be utterly void, except where such securities, conveyances or mortgages shall affect any real estate, when the same shall be void as to the grantee therein, so far only as herein after declared.

1 R. L., 153, § 1; 19 B., 127; 3 D., 342; 1 N. Y., 392.

Such securities upon real estate to be for benefit of heir, &c., of grantor.

§ 17. When any securities, mortgages or other conveyances, executed for the whole or part of any consideration specified in the preceding section, shall affect any real estate, they shall enure for the sole benefit of such person as would be entitled to the said real estate, if the grantor or person incumbering the same, had died, immediately upon the execution of such instrument, and shall be deemed to be taken and held to and for the use of the person who would be so entitled. All grants, covenants and conveyances, for preventing such real estate from coming to, or devolving upon, the person hereby intended to enjoy the same as aforesaid, or in any way incumbering or charging the same, so as to prevent such person from enjoying the same fully and entirely, shall be deemed fraudulent and void.

Persons playing, &c., competent witnesses against others.

§ 18. No person, other than the parties in the cause, shall be incapacitated or excused from testifying, touching any offence committed against any of the foregoing provisions; relating to gaming, by reason of his having played, betted or staked, at any game, as herein prohibited; but the testimony of any such person shall not be used against him, in any suit or prosecution hereby authorised.

1 R. L., 153, § 8.

[664] Answers to bills of discovery may be compelled.

§ 19. Every person who shall be liable to be sued by any loser or other person, by virtue of any of the foregoing provisions relating to gaming, in this Article contained, shall be compelled to answer, on oath, any bill that may be exhibited against him, in the court of chancery, for discovering the money or other things won at play contrary to law; and may be compelled, by decree of such court, to return the same.

1 R. L., 153, § 3 & 4.

Answers not testimony in certain cases.

When witnesses may be discharged from penalties.

§ 20. The answer to such bill shall not be used as testimony, in any case, against the person making such discovery.

§ 21. Any person offending against any of the provisions contained in this Article, who shall be admitted and examined as a witness, in any court of record, to sustain any suit or prosecution herein authorised, may, by rule of the court, be discharged from all penalties by reason of such offence, if such person hath not before been convicted thereof, or of a similar offence, and if it appear to the court satisfactorily, that such person was duped or enticed into the commission of the offence, by those against whom he shall testify.

1 R. L., 153, § 7.

See Laws of 1851, ch. 504; 1855, ch. 214.

ARTICLE FOURTH.

ART. 4.

OF RAFFLING AND LOTTERIES.

- SEC. 22. Penalty for setting up money or property to be raffled for.
 23. Raffling prohibited.
 24. Contracts and securities on account of raffling, void.
 25. Money paid for any interest in a raffle, may be recovered back.
 26. Unauthorised lotteries declared unlawful.
 27. Penalty for unauthorised lotteries.
 28. Penalty for printing, publishing notices.
 29. Penalty for selling, procuring tickets.
 30. Penalty for offering for sale property, dependant on any lottery.
 31. Property forfeited; how recovered and applied.
 32. Purchasers of tickets may recover double the sum paid.
 33. Prizes drawn forfeited; how collected and applied.
 34. Offices for registering numbers prohibited.
 35. Selling of chances and insurances prohibited.
 36. Insuring tickets in any lottery prohibited.
 37. Penalty for violating either of three last sections.
 38. Transfers of property pursuant to an illegal lottery, void.
 39. Prohibition against selling lottery tickets.
 40. By whom licenses to be granted in certain cities and counties.
 41. Contents of licenses; effect thereof.
 42. Licenses to be granted to certain persons, without bond.
 43. All other venders to pay certain sums for licenses.
 44. And to execute bonds; their penalty and condition.
 45. Bonds, where filed; fee for license.
 46. Bonds, when prosecuted; recoveries, to whom to be paid.
 47. Monies received from licenses in New-York, how applied.
 48. Application of monies received in other cities, and in Lansingburgh.
 49. When venders to forfeit licenses.
 50. Certain persons authorised to divide lottery tickets into shares.
 51. Penalty for selling, &c., any shares, other than those.
 52. Certain evidence not necessary in prosecutions.
 53. Forgery of lottery tickets, &c., how punished.
 54. Grand juries to be charged to enquire into violations of this Article.

§ 22. No person shall set up or propose any money, goods, chattels or things in action, to be raffled for, or to be distributed by lot or chance, to any person who shall have paid, or contracted to pay, any valuable consideration for the chance of obtaining such money, goods, or things in action. Any person offending against this provision, shall forfeit three times the sum of money, or value of the articles so set up, together with the sum of ten dollars, to be recovered by and in the name of the overseers of the poor of the town where the offence was committed.

[665]
 Penalty for
 setting up
 money, &c.,
 to be raffled
 for.

1 R. L., 222, § 7; 11 N. Y., 438; 7 N. Y., 241; 13 B., 577.

§ 23. No person shall raffle for any sum of money, goods or things in action, or become interested in the distribution of any money, goods or things in action, by lot or chance. Whoever offends against this provision, shall forfeit ten dollars, to be recovered as directed in the preceding section.

Raffling
 prohibited.

§ 24. All contracts, agreements and securities given, made or executed, for or on account of any raffle, or distribution of money, goods or things in action, for the payment of any

Contracts,
 &c., on ac-
 count of
 raffling,
 void.

TITLE 2.

money, or other valuable thing, in consideration of a chance in such raffle or distribution, or for the delivery of any money, goods or things in action, so raffled for, or agreed to be distributed as aforesaid, shall be utterly void.

Money paid for chances, &c., may be recovered back.

§ 25. Any person who shall have paid any money, or valuable thing, for a chance or interest in any such raffle or distribution, as is prohibited by the preceding sections, may sue for and recover the same of the person to whom such payment or delivery was made.

Lotteries unlawful, &c.

§ 26. Every lottery, game, or device of chance, in the nature of a lottery, by whatever name it may be called, other than such as have been authorised by law, shall be deemed unlawful, and a common and public nuisance.

Laws of 1819, 258, § 1.

Penalty for setting up, drawing, &c., unauthorised lotteries.

§ 27. No person, unauthorised by special laws for that purpose, shall, within this state, open, set on foot, carry on, promote, or draw, publicly or privately, any lottery, game, or device of chance of any nature or kind whatsoever, or by whatever name it may be called, for the purpose of exposing, setting to sale, or disposing of any houses, lands, tenements, or real estate, or any money, goods, or things in action. Whoever offends against this provision, shall be deemed guilty of a misdemeanor; and on conviction, shall be subject to a fine equal to the amount of the whole sum or value for which such lottery, game or device, was made; and if such amount cannot be ascertained, then to a fine of two thousand five hundred dollars, or to imprisonment not exceeding two years, or to both, in the discretion of the court.

Laws of 1819, 259, § 2 & 3; 7 N. Y., 241; 3 D., 89, 91; 23 W., 418; 5 J. R., 327; 4 B., 314.

Penalty for printing, publishing, &c., notices of illegal lotteries.

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§ 28. No person shall, by printing, writing, or in any other way, publish an account of any such illegal lottery, game or device, stating when or where the same is to be drawn, or the prizes therein, or any of them, or the price of a ticket or share therein, or where any ticket may be obtained therein, or in any way aiding or assisting in the same. Whoever offends against this provision, shall be deemed guilty of a misdemeanor; and on conviction, be subject to a fine not exceeding one hundred and fifty dollars, or to imprisonment not exceeding three calendar months.

1 N. Y., 184; 3 D., 213.

Penalty for selling, procuring, &c., tickets, &c., in illegal lotteries.

§ 29. No person within this state, shall vend, sell or barter, furnish, supply, procure, or cause to be furnished or procured, or offer to vend, sell, barter, furnish, supply, procure, or cause to be furnished or procured, to or for any person or persons, any ticket, or part or share of a ticket, or any paper or instrument purporting to be a ticket or part of a ticket, or to be a share or interest in any ticket, or any certificate of any share or interest in any ticket, or in any paper purporting to be a ticket, of any such lottery, device or game of chance, not

expressly authorised by law; nor shall any person be aiding, abetting, or assisting in the commission of either of the said offences. Whoever shall offend against either of these provisions, shall be deemed guilty of a misdemeanor; and on conviction, shall be liable to a fine not exceeding five hundred dollars, or to imprisonment not exceeding one year, or to both, in the discretion of the court.

Laws of 1827, 329, §§ 6 & 12; 1 N. Y., 180; 4 B., 314; 3 D., 101.

§ 30. No person, unauthorised by special law for that purpose now existing, shall offer for sale, distribution, or disposition, in any way, any real estate, or any money, goods, articles, or things in action, or any interest therein, to be determined by lot or chance, that shall be dependant upon the drawing of any authorised or unauthorised lottery within or out of this state; nor shall any person sell, furnish or procure, or cause to be sold, furnished or procured, in any manner whatsoever, any chance, share or portion, or any interest of any kind whatsoever, in any property so illegally offered for sale, distribution or disposition as aforesaid, or any ticket or other evidence of any chance or interest in such property, to be determined by any drawing as aforesaid, or any instrument purporting to be such ticket or evidence. Whoever offends against either of these provisions, shall be deemed guilty of a misdemeanor; and on conviction, shall be liable to a fine not exceeding five hundred dollars, or to imprisonment not exceeding one year.

7 N. Y., 241.

§ 31. All property so offered for sale, distribution or disposition, against the provisions of law, shall be forfeited to the people of this state, as well before as after the determination of the chance on which the same was dependent; and it shall be the duty of the respective district attornies, to demand, sue for and recover, in behalf of this state, all property so forfeited, and to maintain the proper actions for the same after demand made, and to pay the proceeds of the sale of such property, and any monies that may be collected in any such suit, into the county treasury, for the benefit of the poor.

7 N. Y., 241; 5 S. S. C., 635.

§ 32. Any person who shall purchase any share, interest, ticket, certificate of any share or interest, or part of a ticket, or any paper or instrument purporting to be a ticket or share or interest in any ticket, or purporting to be a certificate of any share or interest in any ticket, or in any portion of any illegal lottery, may sue for and recover double the sum of money, and double the value of any goods or things in action, which he may have paid or delivered in consideration of such purchase, with double costs of suit.

2 R. L., 189, § 4.

§ 33. Any prize that shall be drawn in any lottery forbidden by law, shall be forfeited to the use of the poor; and it shall

Penalty for offering for sale any property, dependent on drawing of any lottery.

Property so offered for sale, forfeited; how recovered and applied.

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Purchasers of tickets, &c., to recover double the sum paid.

Prizes in illegal lotteries, forfeited.

TITLE 8.

be the duty of the overseers of the poor of the town where the person or persons drawing such prize, or any of them, shall reside, to sue for the same, in their names; and they shall recover the same, in an action for money had and received, founded upon this statute.

Registering
offices pro-
hibited.

§ 34. No person shall open, set up, exercise, or keep by himself, or by any other person or persons, any office or other place for registering the numbers of any ticket in any lottery not authorised by the laws of this state; nor shall any person, by printing, writing or otherwise, publish the setting up, opening, or using of any such office or other place.

Laws of 1819, 260, § 6.

Selling
chances, in-
suring, &c.

§ 35. No person shall sell the chance or chances of any ticket in any lottery not authorised by the laws of this state; nor shall any person insure for or against the drawing of any such lottery.

Prohibition
against in-
suring tick-
ets in any
lottery, and
against
publishing
notice
thereof, &c.

§ 36. No person shall insure, or receive any consideration for insuring, for or against the drawing of any ticket or tickets in any lottery whatever, whether authorised by law or not; nor shall any person receive any money, or goods or thing in action, in consideration of any agreement to repay any sum or sums, or to deliver the same or any other goods or thing in action, if any ticket or tickets in any lottery whatever shall prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day, or in any particular order, or otherwise howsoever; nor shall any person promise or agree to pay any sum of money, or to deliver any goods or thing in action, or to do or forbear to do any thing for the benefit of any other person or persons, with or without consideration, upon any event or contingency dependent on the drawing of any ticket or tickets, or the number or numbers of any tickets, in any lottery whatever; nor shall any person publish any notice or proposal, for any of the purposes aforesaid.

Laws of 1819, 260, § 7.

Penalty for
violating
three last
sections.
(668)

§ 37. Whoever shall offend against any of the provisions contained in the three preceding sections, shall be deemed guilty of a misdemeanor; and on conviction, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment not exceeding one year.

Certain
transfers of
property
void.

§ 38. Every grant, bargain, sale, conveyance, or transfer of any real estate, or of any goods, chattels, things in action, or any personal property, which shall hereafter be made in pursuance of any lottery not authorised by the laws of this state, or for the purpose of aiding and assisting in such lottery, game or other device, to be determined by lot or chance, are hereby declared void and of no effect.

Laws of 1819, 259, § 4.

Selling lot-
tery tickets
without li-
cense pro-
hibited.

§ 39. No person within this state shall directly or indirectly sell, vend, barter, furnish, procure for the purpose of sale, or cause to be sold, vended, bartered, furnished or procured, any

ticket or share or interest in any ticket, of any lottery or other device or game of chance, unless thereto duly licensed in the manner herein after prescribed; and any person offending in the premises, shall be deemed guilty of a misdemeanor, and shall be subject to a fine not exceeding one hundred dollars for every ticket or share, or interest in any ticket so vended, sold, bartered, furnished or procured, or to imprisonment not exceeding one year.

This and the remaining sections of this Title, except when otherwise noted, are taken from the act of 1827, 327.

§ 40. Licenses may be granted to any person applying for the same to carry on the business of vending lottery tickets, for the term of one year from the date thereof, in the cities of New-York, Albany, Hudson, Troy and Schenectady, by the mayors of the said cities respectively, and in the several counties in this state, except the city and county of New-York, by the judges of the county courts thereof respectively, or the majority of them; but no licenses shall be granted for the cities of Albany, Hudson, Troy and Schenectady, by any other persons than the mayors of the said cities respectively.

Licenses, by whom to be granted.

§ 41. The said licenses shall be entered of record by the clerks of the counties wherein the same are granted; and such record, or a transcript thereof, duly certified by the clerk of the county, under his official seal, shall be evidence in all courts and places whatsoever. Such licenses shall specify the house, store or office where the business of vending tickets shall be carried on, and shall not authorise the selling, bartering or furnishing of any tickets of any lottery in any other place than that so designated, except some other place shall be substituted by the officers having authority to grant such license.

Licenses to be recorded.

Contents.

Effect.

§ 42. A license shall be granted by the said mayors and judges respectively, whenever applied for, to the managers or persons who have purchased the lotteries heretofore authorised by this state, and to the duly authorised agent or agents of the institutions or corporations for whose benefit the said lotteries were granted, who shall be appointed such agent for the purpose of managing any such lottery, and also to any persons who shall be employed by the said managers or purchasers aforesaid, or by the agents aforesaid, to vend tickets for them and in their behalf, upon such persons producing and filing with the said mayors of cities respectively, or with the clerk of the county in which application shall be made, a certificate subscribed by the said managers or purchasers, or by the agents so appointed, specifying that such applicant has been employed by them to vend tickets in their behalf.

Licenses to certain persons without bond, &c.

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§ 43. Before the granting of such license to any other person than the said managers, purchasers, agents or persons employed by them, it shall be the duty of the person desiring a license to vend such tickets in the city of New-York, to pay to the mayor of that city the sum of two hundred and fifty dollars;

Certain sums to be paid by all other vendors.

TITLE 4.

and for a license to vend such tickets in the city of Albany, to pay to the mayor of that city the sum of one hundred and twenty-five dollars; and for a license to vend such tickets in the city of Hudson, to pay to the mayor of that city the sum of seventy-five dollars; and for a license to vend such tickets in the city of Troy, to pay to the mayor of that city the sum of one hundred dollars; and for a license in the city of Schenectady, to pay to the mayor of that city the sum of fifty dollars; and to the treasurers of the counties where applications shall be made to the judges of the county courts, such sums as the said judges, or a majority of them, shall require, not less than twenty dollars, nor more than one hundred dollars: and no licenses shall be granted by the judges of the county courts, until the receipt of the county treasurer for the said sum so required to be paid, shall be produced and filed with the clerk of the county.

And bonds,
to be exe-
cuted by
them.

Penalty and
conditions.

§ 44. No license shall be granted to any other persons than those before excepted, until the person applying for the same shall enter into a bond to the people of this state, with two sufficient sureties, to be approved by the said mayors respectively, in their several cities, or by the judges of the county courts in their several counties, or a majority of such judges, which approbation shall be endorsed on the said bond; and which bond, when executed in the city of New-York, shall be in the penal sum of five thousand dollars, and in any other city or county, in the penal sum of two thousand dollars, with a condition therein that the person receiving such license shall not, during the continuance thereof, directly or indirectly, sell, vend, barter, furnish, supply, procure, or cause to be procured, furnished or supplied, within this state, to any person, any ticket or share, or interest in any ticket, of any lottery, or of any other game or device of chance, other than such as have been authorised by the legislature of this state, or any ticket or share, or interest in any ticket of any private lottery, device or game of chance, dependent upon the drawing of any lottery; and that the person receiving such license, will, during the continuance thereof, conform himself, in all things, to the laws of this state relative to lotteries and the sale of tickets.

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Bonds
where filed.
Fee for li-
cense.

§ 45. Such bond, on being duly executed, shall be delivered to the person or persons to whom application for such license shall be made, before any such license shall be granted, and shall be by them filed in the office of the clerks of their respective counties, and for granting such license, such mayor or judges shall be entitled to receive the sum of fifty cents.

Prosecu-
tion of
bonds.

§ 46. It shall be the duty of the several district attorneys of this state, whenever any condition of any such bond has been violated, to prosecute such bond by action of debt, and to assign the breaches of such condition: and on any breach of such condition being found by verdict or confessed, it shall be the duty of the court wherein such suit is prosecuted, to

render judgment for the penalty of such bond, with the costs of suit, and to cause execution thereon to be duly had. The amount collected on such judgment, upon any bond executed in the city of New-York, over and above the costs, shall be paid to the mayor of the said city, and upon any bonds executed in any other county, to the county treasurer thereof.

§ 47. The monies received by the mayor of the city of New-York, either upon the granting of licenses, or from recoveries upon bonds as aforesaid, shall be paid over from time to time as they shall be received, the one half thereof to the managers of the institution for the education of the deaf and dumb, and the other half to the common council of the said city, for the use of the public schools therein.

§ 48. The monies received as aforesaid by the mayors of other cities of this state, shall be by them paid over as received, to the treasurers of their respective counties; and the monies so received by the said treasurers, as well as the monies received by them on granting licenses, and from recoveries on bonds, shall be preserved as a fund for the support of the poor of the counties respectively in which the same shall be received, subject to the disposition of the board of supervisors of each county, excepting that the monies so received and collected in the city of Hudson, shall be paid over for the benefit of the Hudson Lancaster school; and the monies so collected and received from granting licenses to venders in the first four wards of the city of Troy, shall be paid over to the trustees of the first school district in that city, to be by them applied to the support of a high school on the monitorial plan, and to be accounted for as other school monies that shall come into their hands; and the monies so collected from the venders of lottery tickets in the village of Lansingburgh, shall be paid over by the treasurer of the county of Rensselaer to the trustees of the Lansingburgh monitorial school, to be applied to the use of the said school.

Laws of 1828, 100, 172.

§ 49. If any licensed vender of lottery tickets shall be convicted of any of the offences specified in this Article, his license shall, by such conviction become forfeited, and be held absolutely null and void; and such person shall forever thereafter be debarred from receiving any license to vend lottery tickets in this state; but no such forfeiture of any license shall prevent the prosecution of the bond given by such vender to obtain such license, nor shall such conviction and forfeiture bar any suit or recovery upon any such bond.

§ 50. The agents of the institutions or corporations for whose benefit lotteries have been granted by any law of this state, duly appointed by them, to conduct such lotteries, and the persons who have purchased such lotteries from said institutions or corporations, may divide any tickets in any such lotteries into shares, and may issue certificates of such shares, which shall be subscribed by the agents of the said institu-

ART. 4

Payment
over of re-
coveries.

Application
of monies
received in
New York.

Application
of monies
received in
other cities.

Hudson.

Troy.

Lansing-
burgh.

Licences,
when for-
feited, &c.
[§ 71]

Certain lot-
tery tickets
may be di-
vided into
shares.

TITLE 2.

List thereof
to be made
and filed.

tions or corporations, or by the said purchasers, or by their agents, for that purpose appointed. Before issuing such certificates, a complete list thereof, exhibiting the register and combination numbers thereof, duly certified to be true and correct, by the persons intending to issue the same, shall be filed in the office of the secretary of state. The said list, or a duly certified copy thereof, shall be evidence in all courts.

Penalty for
selling, &c.,
any other
shares of
tickets.

§ 51. No person shall within this state, sell any share or part of a ticket in any lottery whatsoever, other than the certificates of shares issued in conformity to the preceding section; nor shall any person give any writing or certificate that the bearer, or any person, shall be entitled to any share or part of any prize which may be drawn in any lottery whatever, except the certificates issued according to the preceding section; whoever shall offend against these provisions, or either of them, shall be deemed guilty of a misdemeanor, and on conviction shall be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding three calendar months, or to both, in the discretion of the court.

Evidence in
prosecu-
tions under
this Ar-
ticle.

§ 52. It shall not be necessary in the trial of any suit or prosecution under the provisions of this Article, to prove the existence of any lottery in which any ticket, share or part of a ticket purports to have been issued, or the actual signing of any such ticket, or share, or of any pretended ticket or share, of any pretended lottery; nor that any ticket, share or interest, was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases, proof of the sale, furnishing, bartering or procuring of any ticket, share or interest therein, or of any instrument, purporting to be a ticket, or part or share of any ticket, shall be conclusive evidence that such ticket, share or interest was signed and issued according to the purport thereof.

Forgery of
lottery tick-
ets, &c.

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§ 53. If any person shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly act or assist in the false making, altering, forging or counterfeiting any ticket of any lottery, or other game or device of chance, or any share or interest, or any certificate of any share or interest in any ticket of any lottery, or other game or device of chance, with intent to defraud any person or body corporate whatsoever, or shall utter or publish as true, or shall sell or exchange, or offer for sale or exchange, any false, altered, forged or counterfeited ticket of any lottery, or other game or device of chance, or of any share or interest, or of any certificate of any share or interest in any ticket of any lottery, with intention to defraud any person or body politic or corporate whatsoever, knowing the same to be false, altered, forged or counterfeited, then any such person being thereof convicted, shall be subject to imprisonment as prescribed by law.

Act concerning Revised Statutes, of December 10, 1828, § 13; see chap. 1, 4th Part R. S., Title 3, § 33.

ART. 5.
Grand juries to be charged respecting this Article.

§ 54. It shall be the duty of the presiding judge of every court of oyer and terminer, and of every court of general sessions of the peace, specially to charge every grand jury to inquire into all violations of the laws against lotteries, and against the unlawful selling of tickets in lotteries.

See Laws of 1833, ch. 306.

ARTICLE FIFTH.

OF THE RACING OF ANIMALS.

SEC. 55. Racing prohibited; penalty.

56. Duty of public officers to prevent races.

57. Penalty for contributing or collecting purse to be raced for.

58. Penalty on owners and on persons betting.

59 & 60. All racing in New-Utrecht prohibited.

Racing, &c., of horses prohibited.

Penalty.

§ 55. All running, trotting or pacing of horses, or any other animals, for any bet or stakes, in money, goods, or other valuable thing, or for any reward to be given to the owner or rider of any animal which shall excel in speed, excepting such as are by special laws for that purpose expressly allowed, shall be deemed racing within the meaning of this Article, and are hereby declared to be common and public nuisances and misdemeanors; and all parties concerned therein, either as authors, betters, stakers, stakeholders, judges to determine the speed of the animals, riders, contrivers or abettors thereof, shall be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

1 R. L., 222, § 1 & 6; 7 Cow., 255, 496; 1 D., 170; 3 D., 107.

Public officers to prevent races and bind over offenders.

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§ 56. It shall be the duty of all officers concerned in the administration of justice, to attend at the place where they shall know or be informed that any race is about to be run contrary to the provisions of law, and there give notice of the illegality thereof, and endeavor to prevent such race, by dispersing the persons collected for the purpose of attending the same, and by all other ways and means in their power. Upon their own view of any persons offending against the provisions of the preceding section, as well as upon the testimony of others, such judges and justices shall issue warrants for the immediate apprehension of the persons so offending, to the end that they may be compelled to enter into recognizances, with sufficient sureties, for their good behavior, and for their appearance at some proper court, to answer for the said offences.

Penalty for contributing or collecting purse, &c., to be raced for.

§ 57. Every person who shall contribute or collect, or solicit any other person to contribute or collect, any money, goods, or things in action, for the purpose of making up a purse, plate or other valuable thing, to be raced for by any animal contrary to law, or to be given to the owner or rider of any animal so racing contrary to law, shall forfeit twenty-five dollars, to be sued for and recovered by and in the name of

TITLE 8.

the overseers of the poor of the town where the offence may be committed.

1 R. L., 222, § 2, 3 & 4.

Penalty on owners of horses, &c., and on persons betting.

§ 58. The owner, in the whole or in part, of any animal that shall be used or employed, by his permission or privity, in racing, contrary to law, shall forfeit the value of the animal so employed. Every person concerned in laying any bet or wager upon the event of any illegal race, or in contributing to the stakes to be awarded upon any such event, shall forfeit the amount of the bet or wager so made, or of the sum or thing so contributed. The said forfeitures may be sued for and recovered by the overseers of the poor of the town where the offence may be committed.

10 W., 99.

Racing in New-Utrecht prohibited.

§ 59. All racing and running of animals for the trial of speed within the town of New-Utrecht, in the county of Kings, whether the same be for any bet, wager, or stakes, or not, shall be deemed a misdemeanor, and the parties concerned therein shall, on conviction, be liable to fine and imprisonment, as declared in the preceding fifty-fifth section.

Penalty.

§ 60. The owner, in whole or in part, of any animal that shall be used or employed, by his permission or privity, in racing, in the town of New-Utrecht, contrary to the provisions of the preceding section, shall forfeit the value of the animal so employed, to be sued for, recovered and applied as directed in the preceding fifty-eighth section.

Laws of 1820, 79.

ARTICLE SIXTH.

OF PROFANE CURSING AND SWEARING.

Sec. 61 & 62. Penalty for profane swearing; when summary conviction to be made.

63. Proceedings if penalty be not paid or secured.

Penalty for profane swearing; summary conviction.

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§ 61. Every person who shall profanely curse or swear shall forfeit one dollar for every offence; if the offence be committed in the presence and hearing of any justice of the peace, mayor, recorder or alderman of any city while holding a court, a conviction of the offender shall be immediately made by such magistrate, without any other proof whatsoever.

Tb. other cases.

§ 62. And if, at any other time, the offence be committed, in the presence and hearing of such justice, mayor, recorder or alderman, under such circumstances, as in the opinion of the magistrate, to amount to a gross violation of public decency, such magistrate may, in his discretion, convict the offender without other proof.

Proceedings if penalty be not paid or secured.

§ 63. If the offender do not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the common jail of the county for every offence, or for any number of offences whereof he was convicted, at one and the same

time, for not less than one day, nor more than three days, there to be confined in a room separate from all other prisoners.

2 R. L., 195, § 6, 7 & 8.

ARTICLE SEVENTH.

OF THE DISTURBANCE OF RELIGIOUS MEETINGS.

- SEC. 64. Prohibition of acts, disturbing meetings for religious worship
 65. Penalty; proceedings to collect; summary conviction.
 66. Duty of peace officers to apprehend offenders.
 67. Judicial officers may order offenders into custody.
 68. Proceedings on conviction, if penalty be not paid or secured.

§ 64. No person shall wilfully disturb, interrupt or disquiet any assemblage of people met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise either within the place of worship, or so near it as to disturb the order and solemnity of the meeting; nor shall any person within two miles of the place where any religious society shall be actually assembled for religious worship, expose to sale or gift, any ardent or distilled liquors, or keep open any huckster-shop in any other place, inn, store or grocery, than such as shall have been duly licensed, and in which such person shall have usually resided or carried on business; nor shall any person, within the distance aforesaid, exhibit any shows or plays, unless the same shall have been duly licensed by the proper authority; nor shall any person within the distance aforesaid, promote, aid, or be engaged in any racing of any animals, or in any gaming of any description; nor shall any person obstruct the free passage of any highway to any place of public worship, within the distance aforesaid.

Meetings for religious worship not to be disturbed.

Liquor not to be sold.

Shows, &c., not to be exhibited.

Nor racing or gaming.

Highways not to be obstructed.

2 R. L., 194, § 4; and Laws of 1824, 374; 3 W., 253; 6 B., 317.

§ 65. Whoever shall violate either of the provisions of the foregoing section, may be convicted summarily before any justice of the peace of the county, or any mayor, recorder, alderman or other magistrate of any city, where the offence shall be committed, and on such conviction, shall forfeit a sum not exceeding twenty-five dollars, for the benefit of the poor of the county.

Penalty.

Proceedings to collect.

17 W., 211.

§ 66. It shall be the duty of all sheriffs, and their deputies, coroners, marshals, constables, and other peace officers, who may be present at the meeting of any assembly for religious worship, which shall be interrupted or disturbed in the manner herein prohibited, to apprehend the offender, and take him before some justice of the peace, or other magistrate authorised to convict as aforesaid, to be proceeded against according to law.

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Offenders to be apprehended by peace officers present.

19 J. R., 40; 10 W., 377; 9 W., 62.

§ 67. All judges, mayors, recorders, aldermen, and justices of the peace, within their respective jurisdictions, upon their own view of any person offending against the provisions of

May be ordered into custody by judicial officers.

TITLE 8.

this Article, may order the offender into the custody of any officer in the preceding section named, or of any official member of the church or society so assembled and disturbed, for safe keeping until he shall be let to bail, or a trial for such offence be had.

3 W., 253.

Proceedings if penalty be not paid or secured.

§ 68. If any person convicted of any of the offences herein prohibited, shall not immediately pay the penalty incurred, with the costs of the conviction, or give security to the satisfaction of the officer before whom the conviction shall be had, for the payment of the said penalty and costs within twenty days thereafter, he shall be committed by warrant to the common jail of the county, until the same be paid, or for such term, not exceeding thirty days, as shall be specified in the warrant.

2 R. L., 194, § 4; and Laws of 1824, 374; 19 J. R., 40; 19 W., 545.

See Laws of 1834, ch. 78; 1845, ch. 228.

ARTICLE EIGHTH.

OF THE OBSERVANCE OF SUNDAY.

SEC. 69. Service of certain process, &c. on Sunday, prohibited and void, &c.

70. Certain sports and acts, on Sunday, prohibited; penalty.

71. Goods not to be sold on Sunday; to be forfeited; proceedings.

72. Tavern-keepers, grocers, &c. not to sell liquor on Sunday.

Certain process not to be served on Sundays.

§ 69. No writ, process, warrant, order, judgment, decree, or other proceeding of any court or officer of justice, shall be served or executed upon the first day of the week, called Sunday, except in cases of breach of the peace, or apprehended breach of the peace, or for the apprehension of persons charged with crimes and misdemeanors, or the violation of any of the provisions of this and the preceding Article, and except where such service shall be specially authorised by law. The service of any such process or proceeding, in all other cases, shall be utterly void, and shall subject the party offending to damages, at the suit of any person aggrieved.

Service void, &c.

2 R. L., 195, § 5; 193, §§ 1, 2 & 3; 4 N. Y., 296; 12 W., 59; 8 Cow., 30; 1 Cow., 75; 15 J. R., 177; 12 J. R., 179; 3 J. R., 257; 20 How. P. R., 81; 8 B., 384.

Certain sports on Sunday, travelling, laboring, &c., prohibited.

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§ 70. There shall be no shooting, hunting, fishing, sporting, playing, horse-racing, gaming, frequenting of tippling houses, or any unlawful exercises or pastimes, on the first day of the week, called Sunday; nor shall any person travel on that day, unless in cases of charity or necessity, or in going to or returning from some church or place of worship within the distance of twenty miles, or in going for medical aid or for medicines, and returning, or in visiting the sick and returning, or in carrying the mail of the United States, or in going express by order of some public officer, or in removing his family or household furniture when such removal was commenced on some other day; nor shall there be any servile laboring or

working on that day, excepting works of necessity and charity, unless done by some person who uniformly keeps the last day of the week, called Saturday, as holy time, and does not labor or work on that day, and whose labor shall not disturb other persons in their observance of the first day of the week as holy time. Every person being of the age of fourteen years, offending against the provisions of this section, shall forfeit one dollar for each offence.

2 R. L., 195, § 5; 193, § 1, 2 & 3; 25 B., 341; 22 B., 539; 19 B., 584; 1 H., 77; 21 W., 554; 2 S. S. C., 324; 1 Hilt., 473.

§ 71. No person shall expose to sale any wares, merchandise, fruit, herbs, goods or chattels, on Sunday, except meats, milk and fish, which may be sold at any time before nine of the clock in the morning; and the articles so exposed for sale shall be forfeited to the use of the poor, and may be seized by virtue of a warrant for that purpose which any justice of the peace of the county, or mayor, recorder or alderman of the city, is hereby authorised to issue, upon a conviction of the offender. When seized, they shall be sold on one day's notice being given, and the proceeds shall be paid to the overseers of the poor of the town or city.

13 W., 429; 4 E. D. S., 235.

§ 72. No keeper of an inn or tavern, or of any ale-house, or porter-house, or grocery, nor any other person authorised to retail strong or spirituous liquors, shall on Sunday, sell or dispose of any ale, porter, strong or spirituous liquors, excepting to lodgers in such inns or taverns, or to persons actually travelling on that day in the cases allowed by law. Every person offending against this provision, and being thereof duly convicted, shall forfeit the sum of two dollars and fifty cents.

14 B., 427.

See Laws of 1839, ch. 367; 1847, ch. 349.

ARTICLE NINTH.

GENERAL PROVISIONS TO ENFORCE THE PROHIBITIONS OF THE THREE LAST ARTICLES.

- SEC. 73. Proceedings to collect penalties.
 74. Prosecutions to be commenced within twenty days.
 75. Execution to collect penalties.
 76. Certificate of conviction to be filed.
 77. Fees allowed; by whom to be paid.

§ 73. Whenever complaint shall be made to any justice of the peace, mayor, recorder, or alderman, of a violation of either of the provisions contained in the three last Articles, relative to profane swearing, the disturbance of religious meetings, or the observance of Sunday, or when any of such violations shall happen in the presence of such officer, he shall cause the offender to be brought before him, and shall proceed summarily to inquire into the facts; and if the person charged be found guilty, a record of his conviction shall be

ART. 9.
Exceptions.

Goods not
to be sold
on Sunday.

May be seized
and forfeited.

Liquor not
to be sold
on Sunday.

Exception.

Proceedings to collect penalties imposed by three last Articles.

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TITLE 9.

made and signed by such officer, before issuing any process to enforce the same; which conviction shall be final, and shall not be re-examined upon the merits in any court.

2 R. L., 196, § 9 & 10; 10 W., 378; 9 W., 62.

Time limited for prosecuting.

§ 74. No prosecution shall be maintained for any of the violations specified in the preceding section, unless the same be instituted by the actual issuing of process to apprehend the offender, or by his actual appearance to answer the complaint, within twenty days next after the offence committed.

2 R. L., 197, § 11, 12, and other sections.

Execution to collect penalties.

§ 75. Upon a conviction being had for any of the offences in the three last Articles specified, where no other special provision is made for the collection of the penalties incurred, the magistrate before whom the same is made, shall issue an execution to any constable of the county, commanding him to levy the said penalties and the costs of the conviction, by distress and sale of the goods and chattels of the offender, and in case sufficient goods and chattels can not be found, then to commit such offender to such common jail of the county, for such time as shall be specified in such execution, not less than one day nor more than three days.

Certificate of conviction when and where to be filed.

§ 76. Within thirty days after any such conviction shall be had, the magistrate making the same, shall cause to be filed in the office of the clerk of the county, a certificate of such conviction, briefly stating the offence charged, the conviction and judgment thereon, and if any fine has been collected, the amount thereof, and to whom paid.

Act concerning Revised Statutes, December 10, 1828.

Fees of justices and officers.

§ 77. In all prosecutions for any of the offences specified in the three last Articles, the like fees shall be allowed and taken as in civil suits before justices of the peace, which shall in no case exceed five dollars, and be paid by the party offending, over and above the penalties incurred; but in case of the imprisonment of the offender, no charges or fees shall be allowed.

' TITLE IX.*

OF EXCISE, AND THE REGULATION OF TAVERNS AND GROCERIES.

SAC. 1. Who to be commissioners of excise.

2. When and where to meet.

3. Book of minutes to be kept.

4. Power to grant licenses, and to fix sum to be paid therefor.

5. Licenses, how signed; how long in force.

6. In what cases only, licenses to sell liquor to be drank, &c., to be granted.

7. Bond with surety to be executed by tavern-keepers.

8. Penalty on tavern-keepers for not being provided with certain articles.

9. Tavern-keepers to put and keep up a sign.

10. Penalty for putting up sign, without license.

* By Laws of 1867, ch. 636, an excise law was passed, and by sect 23, so much of this title as was inconsistent with that act was repealed. That act will be found in a subsequent volume. See also Laws 1855, chap. 431; 1843, ch. 197.

SEC. 11. Innkeepers not to trust certain persons.

12. Licenses to grocers to specify that no liquor is to be drunk in house.
13. Bond with surety to be executed by grocers.
14. Fee allowed for drawing bond.
15. Penalty for selling less than five gallons without license.
16. Penalty for selling liquor to be drunk in house, without license.
17. Penalty for selling liquor to minors, apprentices or servants.
18. Penalty for receiving from minors, &c., property, &c., in payment or pledge.
19. Penalties to be sued for by overseers of poor.
20. Bonds, when and where to be filed.
21. Who to prosecute for breach thereof.
22. Convictions for penalties to be sent to general sessions.
23. Proceedings; court may revoke license.
24. Person whose license is revoked, incapable of receiving another.
25. Offences against this Title, misdemeanors.
26. Metheglin, cider, and certain wines, excepted.
27. Construction of this Title as to New-York, and cities and villages.
28. Provisions not to extend to vessels or boats.
29. Penalty for selling liquor under five gallons, on board vessels or boats.
30. Penalties for selling on board vessels, &c., how collected and applied.
31. Excise monies in certain counties, to be paid to county treasurer.

§ 1. The supervisor of every town, and the justices of the peace resident therein, shall be commissioners of excise for their town; three of them, consisting of the supervisor and any two justices, shall be competent to execute the powers herein vested in the board. If the office of supervisor be vacant, then any three of the justices shall form a board. If there be not two justices in the town, then any two justices of a neighboring town may be associated by the supervisor with him, and the three shall form a board.

1 R. L., 176, § 1; 2 J. Ca., 346; 1 J. R., 500; 14 How. P. R., 270; 8 How. P. R., 285.

§ 2. The commissioners of excise shall meet in their respective towns, on the first Monday of May in each year, and on such other days as the supervisor shall appoint, at such place as shall be designated by him; or in case his office be vacant, on such other days, and at such places, as the justices of the peace of the town may appoint.

When and where to meet.

§ 3. They shall keep a book of minutes of all their proceedings, in which shall be entered every resolution passed by them, granting a license to any person, with the sum required to be paid by such person; which minutes shall be verified by their signatures, and shall be filed with the town clerk within five days.

To keep book of minutes.

1 R. L., 176, § 3; 1 H., 656.

§ 4. They shall have power to grant licenses to keepers of inns and taverns, being residents of their town, to sell strong and spirituous liquors and wines, to be drunk in their houses respectively; and to grocers being such residents, a license to sell such liquors and wines in quantities less than five gallons, but not to be drunk in their shops, houses, out-houses, yards or gardens; and to determine the sum to be paid for a license,

To grant licenses, and fix sum to be paid therefor.

TITLE 2.

by each person applying; which sum shall not be less than five dollars, nor more than thirty dollars.

1 R. L., 176, § 4; 7 B., 479; 14 J. R., 231; 15 W., 260.

[§79]

Licenses
how sign-
ed: fee
thereon;
how long in
force.

§ 5. The said licenses shall be signed by the commissioners granting the same, for which they shall collectively be entitled to receive the sum of seventy-five cents; they shall not be issued until the said allowance, and the duty fixed by the board, shall have been paid; when issued, they shall be in force, unless revoked, until the day after the first Monday in May in the succeeding year.

1 R. L., 176, § 1 & 4; 1 D., 150; 11 J. R., 178; 2 J. Ca., 346; see *Laws* of 1843, ch. 97.

When licen-
ses to sell
liquors to
be drank,
to be grant-
ed.

§ 6. Licenses shall not be granted to any person to sell strong and spirituous liquors and wines, to be drank in the house of the seller, unless such person proposes to keep an inn or tavern, nor unless the commissioners are satisfied that the applicant is of good moral character, that he is of sufficient ability to keep a tavern, and has the necessary accommodation to entertain travellers, and that a tavern is absolutely necessary for the actual accommodation of travellers, at the place where such applicant resides, or proposes to keep the same; all which shall be expressly stated in every such license.

1 R. L., 176, § 3; 7 B., 479; 1 H., 656; 15 W., 260; 14 J. R., 231.

Bonds by
tavern
keepers.

§ 7. Nor shall such license be granted, until the applicant shall have executed and delivered to the supervisor, or in case of his absence, one of the justices of the town, a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with a sufficient surety, to be approved by the board of commissioners, with a condition that such applicant, during the time he shall keep an inn or tavern, will not suffer it to be disorderly, or suffer any cock-fighting, gaming, or playing with cards or dice, or keep any billiard table or other gaming table, within the tavern so by him kept, or in any out-house, yard or garden, belonging thereto.

1 R. L., 176, § 6; 8 Cow., 139; see *Laws* of 1843, ch. 97.

Tavern
keepers to
provide cer-
tain arti-
cles.

§ 8. Every keeper of an inn or tavern, shall keep in his house at least two spare beds for his guests, with good and sufficient sheeting and covering for such beds; and shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travellers. For every neglect or default in having either of the articles herein required, such keeper shall forfeit five dollars, to be recovered by the overseers of the poor, for the use of the poor.

1 R. L., 176, § 9; 3 H., 156.

To keep a
sign.

§ 9. Every innholder or tavern-keeper, shall, within thirty days after obtaining his license, put up a proper sign, on or

TITLE 2.

adjacent to the front of his house, with his name thereon, indicating in some way that he keeps a tavern; and shall keep up such sign during the time he keeps a tavern. For every month's neglect to keep up such sign, he shall forfeit one dollar and twenty-five cents.

1 R. L., 176, § 15; see Laws of 1843, ch. 97.

§ 10. No person who has not at the time a license to keep a tavern shall erect or put up or keep up any sign indicating that he keeps a tavern; and whoever offends against this provision, shall forfeit one dollar and twenty-five cents for every day such sign shall be kept up.

Sign not to be put up by persons not licensed (689)

3 H., 156; Laws of 1843, ch. 97.

§ 11. No innholder or tavern-keeper, shall trust any persons other than those who may be lodgers in his house, or travellers not residing in the same city or town, for any sort of strong or spirituous liquors, or tavern expenses, above the sum of one dollar and twenty-five cents; nor shall he be capable of recovering the same by any suit. All securities given for such debts shall be void; and the innkeeper taking such securities, with intent to evade this provision, shall forfeit double the sum intended to be secured thereby.

Certain persons not to be trusted above a certain sum by innkeepers.

Penalty.

1 R. L., 176, § 12, 13 & 14; 2 Cal., 187.

§ 12. In all licenses that may be granted to grocers, or other persons applying for the same, (excepting tavern-keepers,) to sell strong or spirituous liquors, or wines, in quantities less than five gallons, there shall be inserted an express declaration that such license shall not be deemed to authorise such sale of any liquor, or wine, to be drank in the house or shop of the person receiving such license, or in any out-house, yard, or garden appertaining thereto, or connected therewith.

Special clause to be inserted in licenses to grocers, &c.

15 W., 260.

§ 13. Such licenses, to grocers, shall not be granted, unless the commissioners are satisfied that the applicant is of good moral character, nor until such applicant shall have executed a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with such surety as shall be approved by the commissioners, conditioned that, during the term for which his license shall be granted, he will not suffer his grocery to become disorderly; that he will not sell, or suffer to be sold, any strong or spirituous liquors, or wines, to be drank in his shop, or house, or in any out-house, yard, or garden appertaining thereto; and that he will not suffer any such liquor, sold by virtue of such license, to be drank in his shop, or house, or in any out-house, yard, or garden belonging thereto.

Bond to be given by grocers.

Its condition.

§ 14. Whenever any bond required by this Title, shall be drawn by any commissioner of excise, he shall not demand or receive therefor any greater fee than twenty-five cents.

Fee for drawing bond.

§ 15. Whoever shall sell any strong or spirituous liquors, or any wines in any quantity less than five gallons at a time,

Penalty for selling under 5 gal-

TITLE 2.
Laws with-
out license.

without having a license therefor granted as herein directed, shall forfeit twenty-five dollars.

1 R. L., 178, § 7; 10 N. Y., 164; 20 B., 246; 12 B., 23; 3 H., 527; 3 D., 44, 226, 437; 1 D., 541; 19 W., 363; 1 Cow., 77; 3 Cal., 137; 17 How. P. R., 443; 13 How. P. R., 74; 13 J. R., 253.

Penalty for
selling li-
quor to be
drank in
house, &c.,
without
license.

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§ 16. Whoever shall sell any strong or spirituous liquors or wines to be drank in his house or shop, or in any out-house, yard or garden appertaining thereto, or shall suffer any such liquors or wines sold by him or under his direction or authority, to be drank in his house or shop, or in any out-house, yard or garden appertaining thereto, without having obtained a license therefor as a tavern-keeper, shall forfeit twenty-five dollars.

1 R. L., 176, § 7; 16 N. Y., 299; 15 W., 260; 13 J. R., 253; 19 W., 363.

Penalty for
selling
liquor to
minors,
apprentices
or servants.

§ 17. No tavern-keeper, grocer, or other person licensed to sell any strong or spirituous liquors or wines, shall sell any such liquors or wines to any apprentice or servant, knowing or having reason to believe him to be such, without the consent of his master; nor to any minor under the age of fourteen years, without the consent of his father or mother or guardian. Whoever shall offend against either of these provisions, shall forfeit five dollars, to be recovered by the master of such apprentice or servant, or by the parent or guardian of such minor.

1 R. L., 176, § 11.

Not to re-
ceive pro-
perty, &c.,
in payment
or pledge,
for liquors
sold to
minors, &c.

§ 18. No tavern-keeper, grocer, or other person shall directly or indirectly take or receive from any such apprentice or servant or minor, any clothing, or any goods, money or things in action, in payment for any strong or spirituous liquors or wines, sold to such apprentice, servant or minor, or in pawn or pledge to secure any such payment. Whoever shall offend against this provision, shall forfeit three times the sum or value of the money or articles so received, to the master of such apprentice or servant, or to the parent or guardian of such minor, as the case may be, to be recovered by them, together with the money or articles so received.

1 R. L., 176, § 12.

By whom
penalties to
be collected

§ 19. The penalties imposed by this Title, shall be sued for and recovered by the overseers of the poor of the town where the offence is committed, except in those cases where other special provisions are made.

1 R. L., 176, § 16; Laws of 1820, 30, § 1; 10 N. Y., 164; see Laws of 1835, ch. 272; 1842, ch. 157; 1845, ch. 300.

Bonds when
and where
to be filed.

§ 20. Every bond taken pursuant to the provisions of this Title, within five days after the execution of the same, shall be filed in the office of the clerk of the town, city or village, in which the license shall be granted.

Prosecu-
tions on
breach of
bonds.

§ 21. Whenever a breach of the condition of such bond shall happen, it shall be the duty of the supervisor of the town, mayor of the city, or trustees of the village in which

such bond was executed, to prosecute the same and recover the penalty thereof for the use of the poor.

§ 22. Whenever any conviction or judgment shall be obtained against any person licensed to sell strong or spirituous liquors or wines, for any violation of the provisions of this Title, either in a suit for a penalty, or in a suit upon the bond given by such person, it shall be the duty of the justice or court before whom the same shall be had, to transmit to the next court of general sessions of the peace of the county, a statement of such conviction or judgment, and of the offence for which it was obtained.

Certain convictions and judgments to be sent to general sessions.

§ 23. The said court shall cause the person against whom such conviction or judgment was obtained, to be notified to appear on such day as the court shall appoint, to show cause why any license that may have been granted to him to sell strong or spirituous liquors or wines, should not be revoked. At the day appointed, and at such other days as the court shall appoint, it shall proceed to inquire into the circumstances, and may in its discretion revoke and annul any such license. If such conviction or judgment be for a second or other offence after the first, the court shall revoke and annul such license.

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License when to be revoked.

§ 24. Upon any order being entered for the revocation of any such license, the said license shall be annulled and altogether void; and the person whose license shall be so revoked, shall be incapable of receiving any license to sell strong or spirituous liquors or wines, for the space of three years from the time of such revocation.

Consequence of revoking license.

§ 25. All offences against the provisions of this Title shall be deemed misdemeanors, punishable by fine and imprisonment.

Violations of this title, misdemeanors.

1 R. L., 176, § 17; 13 How. P. R., 74.

§ 26. No person shall be subject to be prosecuted by virtue of the provisions of this Title, for selling metheglin, currant wine, cherry wine, or cider.

Exception of cider, &c.

1 R. L., 176, § 7.

§ 27. The preceding provisions of this Title shall not extend to the city of New-York; nor shall they impair the powers of any corporation of any other city, town or village, or of the trustees of any village, specially authorised by law to grant licenses to sell strong or spirituous liquors, but such powers shall be exercised in the manner herein prescribed by such corporation, or the officers authorised by it, instead of the board of commissioners of excise herein created.

Application of this title to New York and other cities, and to villages, &c.

10 W., 547; 13 W., 325.

§ 28. The preceding provisions of this Title shall not extend to any person selling strong or spirituous liquor or any wines, on board any boat or vessel navigating any river, lake, canal, or other stream within this state.

Not to extend to vessels and boats.

15 W., 217.

§ 29. Whenever any boat or vessel of any description,

Penalty for selling

TITLE 10.
Liquor under 5 gallons, on board vessels or boats.

How collected and applied.

[633]
Excise monies in certain counties to be paid to county treasurer.

navigating any river, lake, canal or other navigable water within this state, shall remain at any city, town, village or other place, for a longer time than one hour, no strong or spirituous liquor or wine shall be sold in any quantity less than five gallons, on board of such boat or vessel while so remaining beyond such hour, to any person or persons whatever, under the penalty of twenty-five dollars for each offence.

§ 30. Every penalty incurred by selling strong or spirituous liquor on board a steam-boat or canal boat, shall be sued for and recovered by and in the name of the overseers of the poor of the town or city in which the offence was committed, and shall be appropriated to the use of the poor.

§ 31. In those counties in which the distinction between town and county poor is or shall be abolished, all monies received for excise duty in any city or village, except the city of New-York, shall be paid into the county treasury for the support of the poor; and the same remedies may be had for the collection thereof, by the county treasurer against the trustees, or other persons receiving the same, as in the case of commissioners of excise of a town.

16 How. P. R., 260; see Laws of 1845, ch. 300; 1843, ch. 97; 1842, ch. 157; 1835, ch. 272.

TITLE X.

OF THE NAVIGATION OF RIVERS AND LAKES, AND THE OBSTRUCTION OF CERTAIN WATERS.

- SEC. 1. Steam-boats meeting, to pass to the right of each other.
2. Passengers not to be put in small boats, until they are disengaged.
 3. Engine to be stopped at certain times.
 4. Passengers may be landed by line hauled by hand.
 5. Engine to stop during landing, except in certain cases.
 6. Oars to be kept in small boats; signals when to be given.
 7. Steam-boats going the same direction, how far to keep from each other.
 8. Lights to be carried in the night time.
 9. Penalties, how collected and applied.
 10. Penalties incurred by masters, may be recovered of owners.
 11. Attaching line to machinery of boat, how punished.
 12. Vessels in Hudson river, &c., to show lights in night time.
 13. The first 14 sections of this Title, to be posted in every steam-boat.
 14. Definition of the term "master." m
 15. Nets and other obstructions in channel of Hudson river, forbidden.
 16. Obstructions below New-York forbidden.
 17. Qualification of last section, as to certain waters.
 18. Penalties for obstructions in Hudson river, out of its channel.

Steam-boats to pass on the starboard side of each other.

§ 1. Whenever any steam-boats shall meet each other on the waters of the Hudson river, or on any other waters within the jurisdiction of this state, each boat so meeting shall go towards that side of the river or lake which is to the starboard or right side of such boat, so as to enable the boats so meeting, to pass each other with safety.

Laws of 1826, 252, § 1 & 2.

§ 2. Whenever any passenger is about to be landed from any steam-boat navigating the waters of this state, and such steam-boat shall not be so near the shore, that the passenger can be landed immediately from the steam-boat on the shore, no passenger shall be put or suffered to go into any small boat, for the purpose of being landed, until such small boat shall be completely afloat, and wholly disengaged from the steam-boat, except by a painter.

§ 3. While any passenger is getting into a small boat, from a steam-boat, for the purpose of being landed, the engine of the steam-boat shall be stopped, and when any passenger is taken on board of any small boat belonging to any steam-boat, the engine of such steam-boat shall be stopped while such small boat is at the shore, and until such passenger shall have left the small boat and be on board of the steam-boat, except as herein after specified.

Laws of 1828, 204, § 2, 3, 4 & 5.

§ 4. Passengers may be landed in a small boat by means of a line from the steam-boat, and boats from the shore containing passengers may be drawn to a steam-boat, by means of a line hauled in by hand; but in no case shall the line be attached to, or hauled in, by the machinery of the steam-boat.

§ 5. During the time of landing and receiving any passenger, the engine of the steam-boat shall not be put in motion, except,

1. To give sufficient force to carry the small boat to the shore; or,

2. To keep the steam-boat in proper direction, and to prevent her from drifting or being driven on shore.

§ 6. In every small boat, while landing or receiving any passenger from or on board of any steam-boat, there shall be kept a good and sufficient pair of oars suitable for such small boat; and in landing or receiving any passenger in the night time, there shall be a signal given from the small boat at the shore, by means of a horn or trumpet, to enable those having charge on board the steam-boat, to determine when the small boat, having landed or received her passengers, is ready to leave the shore.

§ 7. Whenever any steam-boat shall be going in the same direction with another steam-boat ahead of it, it shall not be lawful to navigate the first mentioned boat so as to approach, or pass the other boat so being ahead, within the distance of twenty yards; and it shall not be lawful so to navigate the steam-boat so being ahead, as unnecessarily to bring it within twenty yards of the steam-boat following it.

§ 8. Whenever any steam-boat shall be navigating in the night time, the master of such boat shall cause her to carry and show two good and sufficient lights, one of which shall be exposed near her bows, and the other near her stern, and the last shall be at least twenty feet above her deck.

Laws of 1826, 253, § 3 & 4; 4 S. S. C., 506.

TITLE 10.
Small boats
to be disen-
gaged be-
fore passen-
gers put on
board them.

When en-
gine to be
stopped.

[§34]
When line
may be
used to
land pas-
sengers.
&c.

During
landing,
&c., of
passen-
gers, engine
to stop.

Oars in
small boats.

Signals.

Navigation
of steam-
boats going
the same
direction.

To carry
lights in
night time.

TITLE 10.
Penalty for
violating
last sec-
tions.

How col-
lected.

Where paid

Certain de-
ductions.

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§ 9. Every master of any steam-boat, who shall violate either of the preceding eight sections, shall for every such offence, forfeit the sum of two hundred and fifty dollars, to be sued for in the name of the people, by the district attorney of any county bordering on the waters on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence. The penalty, when recovered, shall be paid into the county treasury of the county for which such district attorney shall have been appointed, for the use of the poor of the county, except that the court in which the recovery shall be had, may order such portion thereof, not exceeding twenty-five dollars, as it shall deem just, to be paid to the district attorney by whom the suit shall have been prosecuted, as a compensation for his services and expenses, beyond the taxable costs to be recovered by him.

Laws of 1826, 252, § 1, 2, 3, 4, 8; see Laws of 1843, ch. 321.

Owners
liable for
penalties
incurred by
masters.

§ 10. The owners of every steam-boat shall be deemed responsible for the good conduct of the masters employed by them; and if any penalty incurred by such master cannot be collected of him by due course of law, the same may be recovered of the owners of the boat in whose employ he was at the time such offence was committed, jointly and severally, in the same manner as if they were sureties of such master.

1 H., 481; see Laws of 1829, ch. 314.

Punish-
ment
for attach-
ing line to
machinery
of boat, &c.

§ 11. In case any line used for the purpose of landing or receiving passengers, shall be attached in any way to the machinery of any steam-boat, or the small boat shall be hauled in by means of such machinery, the person having the command or charge of such steam-boat, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, in the discretion of the court before which such conviction shall be had; but such fine shall not exceed two hundred and fifty dollars, and such imprisonment three months.

Laws of 1828, 205, § 7.

Vessels to
show lights
in night
time.

Penalty.

When
owners of
vessels li-
able for.

§ 12. Whenever any vessel navigating that part of the Hudson river which is north of the battery, at the southern extremity of New-York, or navigating lake Champlain, shall be at anchor in the night time, the master of such vessel shall cause her peak to be lowered, and shall cause a good and sufficient light to be shown in some part of her rigging, at least twenty feet above her deck, and from her taffrail; under the penalty of fifty dollars, to be sued for and recovered, against the master of such vessel, by the overseers of the poor of the city or town in which the offence shall have been committed. And in case such penalty cannot be collected from the master, the owners of such vessel shall be liable therefor, as provided in the preceding tenth section.

Laws of 1826, 254, § 5; see Laws of 1839, ch. 349.

§ 13. It shall be the duty of the master of every steam-boat navigating the waters of this state, to keep a copy of the first fourteen sections of this Title posted in a conspicuous place in such boat, for the inspection of all persons on board the same; and in case of neglect herein, every such master shall forfeit at the rate of twenty-five dollars per month, for all the time during which he shall be guilty of such neglect, to be sued for and recovered in the name of the people of this state, by the district attorney of any county bordering on the waters on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence. The penalty, when recovered, shall be for the use of the poor of the county for which the district attorney, by whom the suit shall have been prosecuted, was appointed.

Laws of 1826, 255, § 8 & 12.

§ 14. The term "master," whenever it occurs in the foregoing sections, shall be construed to apply to every person having, for the time, the charge, control or direction of any steam-boat, or other vessel comprised within the provisions of those sections.

See Laws of 1841, ch. 65; 1837, ch. 153.

§ 15. No person shall make use of any set-nets, weirs, hoop-nets, or fikes in the channel of Hudson river, at any place between the city of New-York and the state dam at Fort-Edward; nor shall any person set, drive or place, or cause to be set, driven or placed, any hedge, stake, stone, post, pole, anchor, or any other fixture, for any purpose whatever, in the said channel, at any place within the points above specified.

Laws of 1815, 148, § 1 & 2.

§ 16. No person shall set or place, or cause to be set or placed, during the months of March, April or May, in any year, in any of the waters of this state at or below the city of New-York, any fike-net, gill-net, hoop-net, set-net, or any other net or weir, by means of any hedge, stake, stone, post, pole, anchor, or any other fixture, to extend into the channel of said waters, or to any greater distance from the shore, in any case, than twenty rods from the ordinary low water mark. Whoever shall violate the provisions of this or of the preceding section, shall, for every offence, forfeit the sum of one hundred and fifty dollars, for the use of the poor of the county in which such offence shall be committed, to be sued for in the name of the people, by the district attorney of any county bordering on the waters on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence.

Laws of 1815, 148, § 5 & 6; Laws of 1816, 188, § 1; 1820, 27.

§ 17. The last preceding section shall not be construed to affect any special regulation heretofore made by law, and now in force, concerning the placing of nets or obstructions in the

TITLE 18.
First 14
sections to
be posted in
every
steamboat.

Penalty for
neglect.

How recover-
ed and
applied.

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Term
"master"
defined.

Prohibition
against ob-
structions
in channel
of Hudson
river.

Obstruc-
tions at
and below
New York.

Penalty for
violations
of this and
last section.

Last sec-
tion quali-
fied.

TITLE II.

waters adjacent to Staten-Island, and to the town of New-Utrecht.

Same references, and Laws of 1822, 107.

Provisions
against ob-
structions
out of chan-
nel of Hud-
son river.

§ 18. No person shall make use of any fike-net, gill-net, hoop-net, set-net, or any other net or weir, nor set, drive or place any hedge, stake, stone, post, pole, anchor, or any other fixture, in any part of Hudson river, out of the channel thereof, between the city of New-York and the state dam at Fort-Edward, other than such as are permitted to be used or placed for the purpose of catching fish, in the next Title of this Chapter. Whoever shall violate either of the provisions of this section, shall, for every offence, forfeit the sum of twenty-five dollars, for the use of the poor of the city or town in which such offence shall be committed; and shall be liable to indictment for a misdemeanor, punishable on conviction, by a fine not exceeding five dollars, or by imprisonment in a county jail not exceeding thirty days, or by both such fine and imprisonment.

Laws of 1815, 148; 1828, 309 § 1.

See Laws of 1841, ch. 65; 1839, ch. 349, 175, 112; 1837, ch. 153; 1829, ch. 314; 1849, ch. 411; 1844, ch. 248; 1855, ch. 556; 1845, ch. 243; 1836, ch. 127.

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TITLE XI.

OF FISHERIES GENERALLY, AND PARTICULARLY IN HUDSON RIVER, AND AT AND BELOW THE CITY OF NEW-YORK.

- SEC. 1. *Coculus indicus* not to be thrown into streams.
 2. Penalty for violating last section.
 3. Salmon not to be taken between certain days.
 4. Fish not to be taken in certain waters on Sunday.
 5 & 6. Fishing with seines or nets on Sunday in any waters, prohibited.
 7. Drift nets not to be used, during certain months.
 8. Fishing prohibited except on certain days.
 9. Penalty for violating two last sections.
 10. Penalty for spearing pike between Fort-Miller dam and Waterford.
 11. Nets of certain description may be used in parts of Hudson river.
 12. Certain poles, &c. may be set in that river, out of its channel.
 13. Penalties how applied; by whom sued for.
 14. Laws concerning fisheries adjacent to Staten-Island.
 15. Courts of common pleas may regulate fishing.
 16. Orders not to continue in force more than three years.
 17. Not to be made or altered, without application of six freeholders.
 18. Notice of application for any order, &c. how to be given.
 19. Orders to be entered in minutes of court; to be published.
 20. Orders to take effect after such publication.
 21. Expenses of application, &c. by whom to be paid.

Use of coco-
lus indicus
prohibited.

§ 1. No person shall put, cast, or throw, into any of the waters of this state, for the purpose of taking or destroying any fish being in any of said waters, any of the berry commonly called *coculus indicus*, whether it be mixed with any other substance or not.

Laws of 1822, 225, § 12.

§ 2. Whoever shall violate either of the provisions contained in the preceding section of this Title, shall, for every offence, forfeit the sum of twenty-five dollars.

TITLE II.
Penalty.

§ 3. No person shall catch, take, or destroy, any of the fish usually called salmon, in any of the waters of this state, between the twentieth day of October, in any year, and the first day of February thereafter; and whoever shall violate the provisions of this section, shall for every offence, forfeit the sum of ten dollars.

Penalty for taking salmon at certain times.

Laws of 1816, 188, § 2.

§ 4. Between the same periods, in any year, no person shall fish with seines, or set, or draw, or raise any sort of nets, or in any manner take fish, in any of the waters of this state, at or below the city of New-York, after the setting of the sun on Saturday of each week, until the rising of the sun on Monday following.

When fish not to be taken on Sunday.

§ 5. No person shall fish with seines, or set, or draw, or raise, any sort of nets, in any of the waters within this state, between twelve o'clock at night of Saturday, in each week, and twelve o'clock at night of the following Sunday.

Fishing with seines, &c., on Sunday.

Laws of 1815, 149, § 4; 1816, 188, § 2; 1822, 108, § 4.

§ 6. Every person who shall violate either of the provisions of the two last preceding sections, shall for every offence, forfeit the sum of twenty-five dollars, but shall not be liable to any penalty imposed in the eighth Title of this Chapter.

Penalty for violating two last sections.

§ 7. During the months of March, April or May, in any year, no person shall use or employ any drift-net, in any of the waters of this state, at or below the city of New-York.

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Drift-nets in certain waters.

Laws of 1815, 149, § 4 & 6.

§ 8. During the same months, in any year, no person shall fish in any manner, on Saratoga or Fort-Miller falls, except on Monday, Friday and Saturday, in each week.

Fishing at Saratoga or Fort-Miller falls.

§ 9. Whoever shall violate either of the provisions of the two last preceding sections, shall for every offence, forfeit the sum of twenty-five dollars.

Penalty for violating two last sections.

§ 10. No person shall spear any fish commonly called pike, in the waters of the Hudson river, between the Fort-Miller dam and the village of Waterford; and whoever shall violate this provision, shall forfeit, for every offence, the sum of ten dollars.

Spearing pike in certain place.

Laws of 1827, 97.

§ 11. Hoop-nets, fikes, or set-nets, may be used for catching fish in Hudson's river, on the flats, and along the flats and shores between the city of New-York and the state dam at Fort-Edward, provided they be constructed with buoys not exceeding four feet in length, and two feet in diameter; but such hoop-nets, fikes, or set-nets, shall not be used in the channel of said river, nor in any place that was occupied, or used, prior to the eleventh day of April, one thousand eight hundred and fifteen, for the purpose of drawing seines.

Certain nets may be used in parts of Hudson river.

Laws of 1815, 148, § 1 & 2.

TITLE 11.
Poles, &c.,
connected
therewith,
may be set,
&c.

§ 12. Such poles, stakes, or timber, as may be necessary in fishing with the hoop-nets, fikes, or set-nets authorised in the preceding section, may be set in any part of Hudson's river, out of the channel thereof, between the points mentioned in the last preceding section, provided the navigation of said river be not thereby obstructed or endangered.

Suits for
penalties.

§ 13. All penalties imposed in the preceding sections of this Title, shall be for the use of the poor, and shall be sued for and recovered by the overseers of the poor of the city or town in which the offence shall be committed.

This title
not to apply
to Staten
Island.

§ 14. Nothing contained in the preceding sections of this Title shall be construed to affect any special provisions heretofore made by law, and now in force, concerning the fisheries in the waters adjacent to Staten-Island.

Powers of
common
pleas to
regulate
fisheries.

§ 15. The courts of common pleas in the several counties of this state, shall have power to regulate the fishing in any of the streams, ponds, or lakes, in their respective counties; and to make such order and rule to prevent the destruction of fish therein, as they shall deem proper; and from time to time to remove any restriction against fishing therein, heretofore imposed by law, except the restriction against fishing on Sunday, herein before provided. They shall also have power to prescribe such penalties for the violation of any such order or rule, not exceeding twenty-five dollars for each offence, as they shall deem proper.

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To pre-
scribe
penalties.

This and the remaining sections of this Title, are taken, with some variations, from Laws of 1826, 246, § 1, 2, 3.

Duration of
orders, &c.

§ 16. No such order or rule shall be made, at any one time, to continue in force for any longer term than three years; and every such rule or order may, from time to time, be altered, modified, or annulled by such courts, in their discretion.

Pre-requi-
site to any
order.

§ 17. No such order or rule shall be made, except upon the application of at least six freeholders of the town or towns in which such stream, pond, or lake, is situated, nor shall any such order or rule be altered, modified, or annulled, except upon the like application.

Notice of
application
for order.

§ 18. Before the making of any such application, a notice, signed by the persons making the same, and setting forth the object of the intended application, and the time when the same is to be made, shall be posted up on the outer door of the court-house of the county in which such stream, pond, or lake is situated, at least three weeks before the making of such application, and shall be published three weeks successively in one of the newspapers printed in such county, or if there be no newspaper printed therein, then in the newspaper printed nearest to the stream, lake, or pond, mentioned in the notice. And before the court shall proceed to make, alter, modify, or annul any such order or rule, due proof shall be produced of the posting and publishing of such notice as herein required.

§ 19. Every such order or rule, when granted, shall be entered at length by the clerk of the county, in the minutes of the court, kept by him; and a certified copy thereof shall be immediately posted by him on the outer door of the courthouse of the same county, and continued for six Mondays successively, after the granting of such order or rule. Such copy shall also be published for three weeks successively in a newspaper, as provided in the last preceding section.

TITLE 12.
Orders to be entered, posted and published.

§ 20. After such order or rule shall have been duly posted and published for the period above prescribed, it shall be binding on all persons; and every person who shall violate the same, shall, for every such offence, forfeit the sum prescribed therein, for the use of the poor.

When orders to take effect.

§ 21. The costs and expenses incident to every application for any such order or rule, shall be paid by the persons who shall have signed the notice of the application.

Expenses, by whom paid.

See Laws of 1831, ch. 203; 1840, ch. 267; 1845, ch. 31; 1849, ch. 194; 1851, ch. 478; 1857, ch. 497; ch. 290; ch. 732; ch. 514; 1858, ch. 163.

TITLE XII.

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OF WRECKS.

- Sec. 1. Wrecked property to be recovered by owners.
 2. Sheriffs, coroners and wreck-masters to take charge of wrecks.
 3. When wreck may be sold.
 4. Sale how to be made; proceeds to whom paid.
 5. Upon claim, order for wreck or its proceeds to be granted.
 6. Bond to be given previous to order.
 7. Where to be filed; when to be prosecuted.
 8. Owner may sue for property, although claim rejected.
 9. Person having wreck, to state claim for salvage.
 10. Duties of wreck-masters.
 11. Officers and citizens to aid them, when required.
 12. Officers, &c., entitled to salvage and expenses.
 13. Extent of salvage.
 14 & 15. If salvage, &c., not settled, appraisers to be appointed.
 16. Appraisers to be sworn; their powers; effect of their decision.
 17. Appraisers' fees and expenses, by whom paid.
 18. When wrecked property to be sold and proceeds paid into treasury.
 19. Last section to apply to proceeds of property sold.
 20. Notice of sale of wrecked property to be published in New-York.
 21. Officer having custody of wrecked property, to publish notice.
 22 & 23. Contents of notice; expense of publishing how defrayed.
 24. Penalty on officers violating provisions of this Title.
 25. Penalty on persons for not delivering to officers.
 26. Punishment for defacing marks, &c., or destroying invoices, &c.
 27. Officers to complain of offenders to grand jury.

§ 1. No ship, vessel, or boat, nor any goods, wares, and merchandize, that shall be cast by the sea upon the land, shall be deemed to belong to the people of this state, as wrecked property, but may be recovered by the owner, consignee, or person having the charge thereof, at the time of the happening

Owners, &c., of wrecked property to recover same.

TITLE 12.

of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage, and necessary expenses.

This Title is founded upon the act at p. 68, 1 R. L., from which it differs essentially in the details; 7 N. Y., 558; 7 B., 116; 3 B., 207.

Powers and duties of sheriffs, coroners and wreck-masters.

§ 2. The sheriff, coroners and wreck-masters of every county in which any wrecked property shall be found, when no owner, or other person entitled to the possession of such property, shall appear, shall severally have power, and it shall be their duty, to pursue all necessary measures for saving and securing such property; to take possession thereof, in whose hands soever the same may be, in the name of the people of this state; to cause the value thereof to be appraised by indifferent persons; and to keep the same in some safe place, to answer the claims of such persons as may thereafter appear entitled thereto.

Proceedings for sale of wreck.

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§ 3. If the property so saved shall be in a perishable state, so as to render the sale thereof expedient, it shall be the duty of the officer in whose custody the same shall be, to apply to the first judge of the county, by a petition supported by an affidavit of the facts, for an order authorising such sale; and if the judge to whom such application shall be made; shall be satisfied that a sale of the property would be most beneficial to the parties interested, it shall be his duty to make the order so applied for.

Sale; proceeds how disposed of.

§ 4. If such order be made, the officer having custody of the property directed to be sold, shall sell the same at public auction, at the time and in the manner that shall be specified in the order, and the proceeds of such sale, deducting the expenses thereof, as the same shall be settled and allowed by the judge making the order, shall be paid to the treasurer of the county in which the property shall have been found.

Order for wreck or proceeds to claimant within one year.

§ 5. If within a year after such wrecked property shall have been found and saved, any person shall claim the same or the proceeds thereof, as owner or consignee, or as the agent of the owner or consignee, and shall establish his claim by evidence, which the first judge of the county shall deem to be satisfactory, it shall be the duty of such judge to make an order directing the officer, in whose possession such property or the proceeds thereof shall be, to deliver or pay the same to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of such property.

Bond to be given.

Its condition.

§ 6. No such order shall however be made, unless the claimant shall deliver to such judge a bond, with one or more sufficient sureties to be approved of by the judge, conditioned for the payment of all damages that may be recovered against such claimant or his representatives, within two years after the date of such bond, by any person establishing his title as owner of the property, or proceeds, to be delivered. The

bond shall be taken in the name of the people of this state, and the penalty shall be double the value of the property or proceeds before mentioned.

§ 7. The bond shall be filed in the clerk's office of the county in which it shall be taken. If it shall become forfeited, it shall be the duty of the first judge of such county, upon the application, supported by due proof, of the person entitled to the damages mentioned in the condition of the bond, to make an order for the prosecution thereof, for the benefit of such person and at his risk and expense.

§ 8. The rejection by the judge, to whom it may be exhibited, of any claim for wrecked property, shall not preclude the claimant from maintaining a suit for the recovery of such property or its proceeds, against the officer in whose hands the same shall be; but if the plaintiff in any such suit shall prevail, there shall be deducted, in addition to the salvage and expenses charged on the property, from the damages to be recovered, all the costs of the defendant in making his defence.

§ 9. It shall be the duty of every officer to whom any order duly made, for the delivery of wrecked property, or the payment of its proceeds, shall be directed, to present to the claimant exhibiting such order, a written statement of the claims for salvage and expenses on such property and proceeds.

If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided, and in all cases, after the payment or tender of the payment of such salvage and expenses, as agreed to, or adjusted, the officer, in whose custody such property or proceeds shall be, shall deliver or pay the same, according to the terms of the order, directed to him.

§ 10. It shall be the duty of the wreck-masters, in the several counties, in which they shall be appointed, to give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and to use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandize which may be cast by the sea upon the land; and in the performance of these duties they shall employ such and so many men as they may respectively think proper.

§ B., 205.

§ 11. It shall be the duty of all magistrates, constables and citizens to aid and assist the wreck-masters, when required in the discharge of their duties.

§ 12. All sheriffs, coroners and wreck-masters, and all persons employed by them, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage, for their services, and to all expenses incurred by them, in the performance of such services, out of the property saved, and

Its penalty.

To be filed; when prosecuted.

Owner may sue, although claim rejected.

Claim for salvage to be in writing.

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On being paid, property, &c., to be delivered.

Duties of wreck-masters.

Officers and citizens to aid them.

Officers, &c., entitled to salvage, &c., until paid, wreck may be detained.

TITLE 12.

the officer having the custody of such property shall detain the same, until such salvage and expenses shall be paid.

3 B., 208.

Extent of salvage, &c.

§ 13. The whole salvage that shall be claimed in any case shall not exceed one half of the value of the property or proceeds on which such salvage shall be charged, and every agreement, order or adjustment allowing a greater salvage shall be void.

Proceedings to ascertain salvage, &c., if disputed.

§ 14. If in any case, the amount of salvage and expenses on property saved, shall not be settled by the agreement of the parties, the owner or consignee of such property, or the master or supercargo having charge thereof at the time the same was wrecked, or a claimant having an order for its delivery, may apply to any one of the judges of the county court of the county in which such property shall be, for the appointment of suitable persons as appraisers, to adjust and settle the amount of such salvage and expenses.

Id.

§ 15. It shall be the duty of the judge to whom such application shall be made, by an order under his hand and seal, to appoint three disinterested freeholders of the county, not inhabitants of the town in which the property shall have been saved, to adjust and settle such salvage and expenses.

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Appraisers to be sworn.

§ 16. The persons so appointed, before they shall enter on the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust, before any officer authorised to administer oaths. They shall have power to issue compulsory process for the attendance of witnesses, and to administer oaths to all witnesses who shall attend or be produced; and their decision, or that of any two of them under their hands, as to the amount of salvage and expenses that ought to be paid, and the sums to be paid to each person entitled to share in such salvage, or claiming such expenses, shall be final and conclusive.

Their powers.

Effect of their decision.

Fees and expenses, by whom to be paid.

§ 17. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge on the property saved. Each appraiser shall be entitled to two dollars for each day's necessary attendance, and to a sum not exceeding one dollar for his daily expenses.

When wrecked property to be sold;

§ 18. If within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if within three months after a claim shall have been preferred, the salvage and expenses on such property shall not have been paid, or a suit for the recovery of the property have been commenced, it shall be the duty of the officer in whose custody such property shall be, to sell the same at public auction, and to pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this state, for the benefit of the parties interested; but in no case shall any deduction of salvage and expenses be made, unless the amount thereof shall have been settled upon due proof, by an order

Proceeds to be paid into treasury; deductions for salvage &c.

of the first judge of the county in which the property shall have been saved, a copy of which order and of the evidence in support thereof, shall be transmitted by the judge making it, to the comptroller.

§ 19. The provisions of the preceding section shall be construed to apply to the proceeds of wrecked property, so far as relates to the time and manner of settling the salvage and expenses chargeable thereon. The balance of such proceeds, after the salvage and expenses, as settled, shall have been deducted, shall be paid by the county treasurer into the treasury of this state.

Last section to apply to proceeds of property sold.

§ 20. Public notice of every sale to be made of wrecked property, under the provisions of this Title, shall be published by the officer making the sale, for at least two weeks in succession in one or more of the newspapers printed in the city of New-York. Every such notice shall state the time and place of the sale, and shall contain a particular description of the property intended to be sold.

Notices of sales, when to be published.

§ 21. Every sheriff, coroner, or wreck-master, into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties interested, for at least four weeks in succession, in one or more of the newspapers printed in the city of New-York.

Notice of wrecked property to be published.

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§ 22. Every such notice shall contain a minute description of such wrecked property, and of every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each, and shall state where such wrecked property then is, and its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition.

Contents of notice.

§ 23. The expenses of publishing every notice directed to be published in this Title, shall be charged on the property or proceeds to which such notice shall relate.

Expense, how paid.

§ 24. Every sheriff, coroner, wreck-master, or other officer, who shall detain in his hands any wrecked property or the proceeds thereof, after the salvage and expenses chargeable thereon shall have been agreed to or adjusted, and the amount thereof shall have been paid, or offered to be paid to him, or who shall be guilty of any fraud, embezzlement or extortion, in the discharge of his duties, or who shall, in any manner, violate the provisions of this Title, shall forfeit treble damages to the party injured, and shall be deemed guilty of a misdemeanor.

Penalties on officers for violations of this Title.

§ 25. Every person who shall take away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or who shall knowingly have in his possession any goods so taken or found, and shall not deliver the same to the sheriff, or one of the coroners or wreck-masters of the county where the same shall have been found, within forty-eight hours after the same shall have

Persons having wrecked property, to deliver same, &c.

TITLE II.
Penalty for
neglect.

been taken by him, or have come into his possession, shall forfeit treble the value of the goods so taken or kept by him, to the owner or consignee thereof, and shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

§ B., 201.

Defacing
marks, &c.

§ 26. Every person who shall deface or obliterate the marks on wrecked property, or in any manner disguise the appearance thereof, with intent to prevent the owner from discovering its identity, and every person who shall destroy or suppress any invoice, bill of lading, or other document, tending to show the ownership of wrecked property, shall be deemed guilty of a misdemeanor, punishable by fine and imprisonment, the fine not to exceed two thousand dollars, the imprisonment, three years.

Destroying
invoices,
&c.

Offenders to
be present
ed to grand
jury.

§ 27. It shall be the duty of all judges, sheriffs, justices of the peace, coroners, constables and wreck-masters, to present all offences and offenders against the provisions of this Title, that shall come to their knowledge, within their respective counties, to the grand jury, at the next court of general sessions therein.

See Laws of 1848, ch. 343.

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TITLE XIII.

OF THE LAW OF THE ROAD, AND THE REGULATION OF PUBLIC STAGES.

- SEC. 1. Persons in carriages meeting on any road, to turn to the right.
2. Penalty on owners of stages, &c. employing drivers addicted to drunkenness.
3. Owner when to discharge driver.
4. Punishment for running horses drawing any carriage.
5. Penalty on drivers for leaving horses without being tied.
6. Owners liable for acts of drivers, negligent or otherwise.
7. Meaning of term "carriage," as used in this Title.
8. Laws of cities, &c. concerning hackney coaches, not to be affected.

Carriages
meeting on
roads to
turn to the
right.

§ 1. Whenever any persons travelling with any carriages, shall meet on any turnpike road or public highway in this state, the persons so meeting shall seasonably turn their carriages to the right of the centre of the road, so as to permit such carriages to pass without interference or interruption, under the penalty of five dollars for every neglect or offence, to be recovered by the party injured.

2 R. L., 283, § 41; 227, § 6; 16 N. Y., 382; 12 B., 615; 7 W., 185.

Drivers ad-
dicted to
drunken-
ness, not to
be em-
ployed.

§ 2. No person owning any carriage running or travelling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage, who is addicted to drunkenness, or to the excessive use of spirituous liquor; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment, to be

sued for by the district attorney of the county in which such owner shall reside. The penalty, when recovered, shall be for the use of the poor of such county, except that the court in which the recovery shall be had, may allow a portion of said penalty, not exceeding twenty-five dollars, to be retained by such district attorney, as a compensation for his services and expenses, beyond the taxable costs.

Laws of 1827, 229, § 1.

§ 3. If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his service, within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice, to be sued for and applied as directed in the last preceding section.

TITLE 12.
Penalty,
how col-
lected.
How ap-
plied.

Drivers,
when to be
discharged.

Penalty for
neglect.

§ 4. No person driving any carriage upon any turnpike road or public highway within this state, with or without passengers therein, shall run his horses, or cause or permit the same to run, upon any occasion or for any purpose whatever; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding sixty days, at the discretion of the court.

Running
horses in
any car-
riage, pro-
hibited.

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Laws of 1824, 347, § 2; of 1826, 254, § 6, 7 & 9.

§ 5. It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto, while passengers remain in the same, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit, for the use of the poor, the sum of twenty dollars, to be recovered by action to be commenced within six months. And unless the amount of such recovery be paid forthwith, an execution shall be immediately issued therefor.

Leaving
horses
without be-
ing tied,
&c.

§ 6. The owners of every carriage running or travelling upon any turnpike road or public highway, for the conveyance of passengers, shall be liable, jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owner or owners, as a driver, while driving such carriage, to any person, or to the property of any person; and that whether the act

Owners of
certain car-
riages liable
for acts of
drivers.

TITLE 14.

occasioning such injury or damage be wilful or negligent, or otherwise, in the same manner as such driver would be liable.

Laws of 1824, 347, § 1.

Term "carriage," defined.

§ 7. The term "carriage," as used in this Title, shall be construed to include stage-coaches, waggons, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of persons and goods, or of either of them.

Hackney coaches,

§ 8. Nothing contained in this Title, shall interfere with or affect any law concerning hackney coaches or carriages in any of the cities of this state, nor interfere with nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages.

Laws of 1826, 254, § 10.

See Laws of 1837, ch. 300, as to unclaimed baggage; Laws of 1855, ch. 523.

TITLE XIV.**OF THE FIRING OF WOODS.**

- SEC. 1. Penalties for negligently setting fire to woods, or suffering it to extend.
 2. When woods on fire, certain officers to order inhabitants to assist.
 3. Penalty for refusal or neglect to obey order.
 4. Sums recovered as penalties, shall be applied as rewards, &c.

Punishment for negligence in firing woods, &c.

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§ 1. Every person negligently setting fire to his own woods, or negligently suffering a fire kindled upon his own wood or fallow land, to extend beyond his own land, shall forfeit treble damages to the party injured thereby. Every person so offending shall also be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court; such fine not to exceed one thousand dollars, and such imprisonment not to exceed one year.

1 D., 207.

By whom inhabitants ordered to assist in extinguishing fire.

§ 2. Whenever the woods in any town shall be on fire, it shall be the duty of the justices of the peace, the supervisor and the commissioners of highways of such town, and of each of them, to order such and so many of the inhabitants of such town liable to work on the highways, and residing in the vicinity of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same, or in stopping its progress.

Penalty for neglect.

§ 3. If any person so ordered to repair to and assist, in manner aforesaid, shall refuse or neglect to comply with any such order, he shall forfeit and pay the sum of fifty dollars, and shall also be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, at the discretion of the court; such fine not to exceed one hundred dollars, and such imprisonment not to exceed sixty days.

Shall be given as rewards, &c.

§ 4. Every forfeiture recovered under the last section, shall

be applied as a reward to such person or persons as the officers above mentioned, or a majority of them, shall deem best entitled thereto, for superior exertions in extinguishing or stopping the progress of such fire.

TITLE XV.

OF THE EMBEZZLEMENT OF TIMBER FLOATING.

- Sec. 1. Owners of logs, &c., drifted on shore, may take them.
 2 & 3. In case of dispute, damages to be determined by fence-viewers.
 4. If drifted lumber not removed within 3 months, notice to be given.
 5. To be filed, and exhibited to all persons.
 6. Lumber to be detained until damages paid; how ascertained.
 7. If not claimed within six months, town clerk shall sell it.
 8. Fees of clerk on sale; application of proceeds.
 9. Damages to be assessed before payment by clerk.
 10. Punishment for defacing marks, or putting false marks on lumber.
 11. Penalty for converting lumber in certain situations.
 12. Marks on timber in Hudson river, to be recorded.
 13. Consequence of neglecting to record mark.
 14. Effect of entry or copy, as evidence.
 15. Penalty for drawing to shore, timber floating.
 16. Persons may be appointed to take charge of floating timber.
 17. Description of lumber to be filed; when and how to be sold.
 18. Application of proceeds of sale; owner entitled to surplus.
 19. Rejection of claim conclusive, unless suit be brought in six months.
 20. If not claimed, or suit not brought, proceeds to belong to city.
 21. This Title not to extend to drift wood.

§ 1. Whenever any logs, timber, boards or plank in rafts or otherwise, shall have been drifted upon any island in any of the waters within this state, or upon the bank or shore of any such waters, the owner of such logs or other lumber, may take the same away, on his first paying or tendering to the owner or possessor of the land on which the same shall have been drifted, the amount of the damages which such owner or possessor shall have sustained by reason thereof, and which may accrue in the removal of such logs or other lumber.

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 When owners of drifted logs, &c., may take them.

2 R. L., 236, § 3; Laws of 1825, 280, § 2.

§ 2. If the parties cannot agree as to the amount of such damages, either party may apply to any two of the fence-viewers of the town or city in which such lumber may be found, whose duty it shall be, after hearing the proofs and allegations of the parties, to determine the same, at the expense of the owner of the lumber, and their decision shall be conclusive.

Damages when ascertained by fence-viewers.

§ 3. The fence-viewers, or either of them, shall have power to issue process for such witnesses as may be desired by either party, and to administer oaths to all witnesses produced before them.

Powers of fence-viewers.

§ 4. If the owner of such lumber shall not, within three months from and after the time when such lumber shall have been so drifted, take the same away, it shall be the duty of the owner or possessor of the land on which the same may have been drifted, to deliver to the clerk of such city or town,

Notice of drifted lumber, when to be given to town clerk.

ARTICLE 14.

a note in writing, signed by him, describing as near as may be, such lumber, together with the quantity and mark or marks thereof, and the place where the same is lodged.

2 R. L., 236, § 4, 5, 6 & 7.

To be filed,
&c.

§ 5. It shall be the duty of the clerk, to whom any such note in writing shall be delivered, to file the same in his office, and to produce the same for the inspection of any person who shall request it.

Lumber to
be detained,
&c.

§ 6. The person delivering such note in writing, may detain the lumber described therein, until the owner thereof shall appear and pay the damages, if any, which such person shall be entitled to demand; which damages shall be settled, in case of disagreement between the parties, by the fence-viewers, in the same manner as above provided.

To be sold
if not
claimed in
six months.

§ 7. If no person shall, within six months after the filing of such note in writing, claim the lumber described therein, it shall be the duty of the owner or possessor of the land whereon the same shall have been drifted, to give notice thereof in writing, to the clerk of the city, or town, who shall cause such lumber to be sold by public auction, after giving at least twenty days' previous notice of such sale, by advertisement, to be posted up in at least three of the most public places in such city, or town.

Fees on
sale.

[699]

§ 8. The clerk making the sale, shall be entitled to the same fees therefor, as are allowed to officers making sales on executions issued out of justices' courts. The monies arising from the sale, shall be applied,

1. To the payment of such fees: and,
2. To the payment of the damages, which the owner or possessor of the land shall have sustained by reason of such lumber, and which may accrue in the removal thereof:

Proceeds,
how ap-
plied.

3. The surplus, if any, shall be paid by the clerk of the city, or town, to the treasurer of the county, wherein such lumber shall have been found, for the use of the poor.

2 R. L., 236, § 4, 5, 6 & 7.

Damages to
be assessed
before pay-
ment.

§ 9. Before the clerk shall pay out any of said monies, for the damages of the owner or possessor of the land, such damages shall be assessed by any two fence viewers of the city or town, and a specification thereof, signed by such fence-viewers, shall be filed in the office of such clerk.

Defacing
and forging
marks in
certain
lumber.

§ 10. No person shall cut out, alter, or deface any mark, made upon any logs, timber, boards, or plank, or put a false mark upon any such logs or other lumber, floating in any of the waters of this state, or lying on the banks or shores of any such waters, or at any saw-mill, or on any island where the same may have drifted; and whoever shall violate the provisions of this section, shall, for every offence, forfeit to the owner of such logs or other lumber, the sum of twenty-five dollars, and shall also be deemed guilty of a misdemeanor,

and on conviction, shall be imprisoned not exceeding six months, at the discretion of the court.

Converting
lumber
floating, &c.

§ 11. Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards, or plank, floating in any of the waters of this state, or lying on the banks or shores of any such waters, or on any island where the same may have drifted, shall, for every offence, forfeit to the owner of such logs, or other lumber, treble damages.

Marks to
be put on
timber in
certain
places.

§ 12. Every person who shall put any logs or timber into the waters of the Hudson river, or of its branches, to the northwest of Baker's falls, for rafting or floating down said river, or its branches, shall select some mark, different from any mark previously recorded, and put the same in a conspicuous place, upon each log, or stick of timber, so put into said river, or its branches, and shall cause his mark to be recorded by the town clerk of the town of Queensbury, whose duty it shall be to enter the same in a book, to be kept by him for that purpose, which shall be subject to the inspection of any person requiring it.

To be re-
corded in
Queens-
bury.

§ 13. Every such person, who shall neglect to enter his mark as required in the foregoing section, shall be debarred from all the benefits arising from the due entry of such mark; and the assignee or vendee of any such logs or timber, shall be subject to the same regulations and restrictions.

Conse-
quence of
neglect.

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§ 14. The clerk of the town of Queensbury shall be entitled to a compensation of twenty-five cents for entering every such mark, to be paid by the person requesting the same to be entered; and a copy of such entry, certified by such clerk, shall be received as presumptive evidence, in all courts in this state, that the lumber having such mark, is the property of the person by whom such mark was selected and recorded.

Fees.

Entry, evi-
dence, &c.

§ 15. No person, not authorised as herein after directed, shall stop, take up, draw to, or lodge on the shore of Hudson river, or on any island therein, north of the south boundary line of the city of Albany, on either shore of said river, any logs, timber, boards, or plank floating in said river, without the consent of the owner thereof; and every person offending in the premises, shall, for every such offence, forfeit the sum of ten dollars, to be recovered by the overseers of the poor of the city or town where the offence was committed, for the use of the poor thereof.

Penalty for
drawing
timber, &c.,
floating, to
shore, &c.

2 R. L., 235, § 1.

§ 16. The common council of the city of Albany may, from time to time, appoint one or more persons resident therein, to take into possession any such logs, timber, boards, or plank, for the benefit of the owner thereof, in case such owner shall not reside in said city, or shall have no agent there, or shall be unknown. The persons so appointed shall proceed in the execution of their duties in such manner, and shall receive

Persons in
Albany to
be appoint-
ed to take
care of
timber, &c.

TITLE 17.

When and
how to be
sold, &c.

such compensation, as the said common council shall prescribe; but such compensation, in case of dispute, shall be settled by any two fence-viewers of the city.

§ 17. If the owner of such lumber shall not, within three months from and after the time when such lumber shall have been taken into possession by the persons so appointed, take the same away, it shall be the duty of the persons so appointed, to deliver to the clerk of the city of Albany, a description of such lumber, in the manner prescribed in the fourth section of this Title; and in case no owner shall claim the same, within six months after filing such note in writing, it shall be the duty of the common council of said city, to direct a sale to be made thereof, by the clerk of said city, who shall give notice in the manner, and be entitled to the compensation above provided.

Proceeds of
sale, how
applied.

§ 18. The monies arising from the sale, shall be first applied to the payment of the charges of sale, and the compensation of the persons by whom such lumber shall have been taken into possession: and the residue shall be paid to the chamberlain of said city; and the owner, or his representatives or assigns, shall, at any time within twelve months thereafter, be entitled to demand and receive such residuary monies from the chamberlain of said city, on producing to the common council of said city, satisfactory proof of ownership.

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Suit when
to be
brought.

§ 19. The rejection of any such claim by the common council, shall be conclusive against the right of the claimant, unless within six months after such rejection, he shall commence his action for such residuary monies, against the chamberlain of said city.

When city
to retain
proceeds.

§ 20. If no person shall claim such monies within twelve months after the payment thereof to the chamberlain, or if such claim be made and rejected, and no suit be brought as above provided, or no recovery had therein against the chamberlain, such monies shall remain for the use of the city of Albany.

Drift wood.

§ 21. Nothing contained in this Title shall be construed to extend to that kind of lumber called drift-wood.

2 R. L., 235, § 5.

TITLE XVI.**OF THE PRESERVATION OF DEER AND CERTAIN GAME AND ANIMALS.**

[By subdivision 13 of Section 4, of Chapter 194, of Laws of 1849, all Laws relating to preserving or destroying, killing or taking wild beasts or birds were repealed.]

See Laws of 1857, ch. 287.

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TITLE XVII.**OF DOGS.**

Sec. 1. Tax upon dogs in every county except New-York.

2. Duty of assessors to make lists of owners of dogs, &c.

- SEC. 3. Owner of dog to deliver description on demand.
4. Tax, how collected; to whom to be paid.
 5. Duty of collector; his authority and liability.
 6. Dog may be killed, after neglect to pay tax.
 7. Commissions to collector.
 8. Application of monies collected by tax.
 9. Owner of dog killing, &c. sheep, liable for damages.
 10. Damages from injuries to sheep, how ascertained.
 11. Certificate of fence-viewer, how far evidence.
 12. Application for damages to supervisor.
 13. When board to order payment; from what fund to be paid.
 14. Owner to refund amount, if subsequently recovered by him.
 15. Dogs chasing, &c. sheep, may be killed.
 16. Penalty on owner of dog for not killing it.
 17. When owner of dog may be ordered to kill it.
 18. Penalty for disobeying such order.
 19. Supervisor bound to prosecute for penalties.
 20. Who to be deemed owners of dogs.

§ 1. In all the counties of this state, except the county of New-York, there shall be annually levied and collected the following tax upon dogs; upon every bitch of three months old or upwards, kept by any one person or family, two dollars; upon every additional bitch kept by the same person or family, five dollars; upon two dogs, of six months old or upwards, other than bitches, kept by one person or family, one dollar; upon every such dog more than two kept by the same person or family, three dollars.

Tax on dogs, except in New York.

Laws of 1826, 149, § 1, 2, 3, 5 & 7.

§ 2. The assessors of any town, at the time of making their annual assessments, shall inquire and ascertain the number of dogs liable to be taxed; and shall enter in lists to be made by them, the name of every person in their respective towns, then owning or keeping any dog, subject to the above tax, the number kept by such person, and the whole amount of the tax to be paid by him.

Duty of assessors.

§ 3. The owner or possessor of every dog liable to the above tax, shall, whenever required by any assessor, deliver to him a description in writing of every such dog, owned or possessed by him. For every neglect or refusal so to do, and for every false statement, made in any description so furnished, he shall forfeit five dollars, to be recovered by the supervisor of the town.

Owner to deliver description.

§ 4. The assessors of every town shall within the time required by law for the completion of their assessment rolls of real and personal property, make out a duplicate of the lists so by them made, containing the names of the owners and possessors of dogs liable to taxation, with the amount payable by each person, and annex thereto a direction to the collector of the town, to levy, raise and collect the several sums in such lists specified, of the persons respectively, opposite to whose name the said sums shall be set, according to law, and pay over the same, after deducting his legal com-

Tax how collected, to whom to be paid.

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TITLE 17.

missions, to the county treasurer; which shall be signed by them and be immediately delivered to the town collector.

See Laws of 1835, ch. 117.

Duty of collector, proceedings, liability.

§ 5. The collector to whom such list shall be delivered, shall proceed and collect the sums of money therein specified, within sixty days from the time of such delivery, in the same manner and with the like authority, in all respects, as in the collection of taxes imposed by the supervisors of the county, and shall pay the same to the county treasurer, after deducting the commissions allowed by law; and the same remedies to compel such collection and the payment over of the monies collected, may be had against such collectors and their sureties, as in the case of taxes levied by supervisors.

When dog may be killed.

§ 6. If any person duly assessed shall refuse or neglect to pay the tax so assessed, for five days after demand thereof, it shall be lawful for any person to kill the dog so taxed.

Collector's fee.

§ 7. The collectors shall be allowed to retain a commission of five dollars upon the hundred dollars, and at that rate upon all sums collected by them, pursuant to the directions of the assessors.

Tax how applied.

§ 8. The monies so collected and paid to any county treasurer, shall constitute a fund for the satisfying such damages as may arise in any year from dogs killing or injuring sheep in such county, and the residue for the use of the poor of the county.

Liability of owners of dogs for injuries.

§ 9. The owner or possessor of any dog that shall kill or wound any sheep or lamb, shall be liable for the value of such sheep or lamb to the owner thereof, without proving notice to the owner or possessor of such dog, or knowledge by him, that his dog was mischievous or disposed to kill sheep.

1 R. L., 169, § 1, and act of 1826, 149, § 6; 17 W., 562; 30 B., 155; 21 B., 333; 1 D., 495; 4 Cow., 351.

Fence-viewers to ascertain damage by injuries to sheep.

§ 10. The owner of any sheep or lambs that may be killed or injured by any dog, may apply to any two fence-viewers of the town, who shall inquire into the matter, and view the sheep injured or killed, and may examine witnesses in relation thereto, for which purpose either of them shall have power to administer oaths. If they are satisfied that the same were killed or hurt only by dogs, and in no other way, they shall certify such fact, the number of the sheep killed or hurt, and the amount of the damages sustained thereby by the owner, together with the value of the sheep hurt or killed.

Laws of 1826, 149, § 5 & 6.

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Their certificate evidence.

§ 11. The said certificate shall be presumptive evidence of the facts therein contained, in any suit that may be brought by the party injured against the owner or possessor of any dog. It shall appear on the trial of such suit that due notice was given to the owner of the dog of the intended application to the fence-viewers.

Applications for damages.

§ 12. If the party injured can not discover the owner or

possessor of the dogs by which such damage was done, or shall fail to recover the value of the sheep killed or injured, against such owner or possessor, he may apply to the supervisor of the town, and upon producing to him the certificate of the fence-viewers, made as aforesaid, and his own affidavit that he has not been able to discover such owner or possessor, or that he has failed to recover his damages from such owner or possessor, the said supervisor shall lay the same before the board of supervisors of the county at their next meeting.

§ 13. The board of supervisors shall issue their order on the county treasurer, for the amount of the damages appearing by the certificate of the fence-viewers, to have been sustained by the owner of any sheep killed or injured by dogs, where they shall be satisfied that the owner or possessor of such dogs can not be discovered, or that the party injured has failed to recover such damages of such owner or possessor; which shall be paid by the county treasurer, from the fund constituted by the eighth section of this Title, and from no other monies.

Payment
when to be
ordered.

From what
fund to be
made.

§ 14. If after receiving the amount of such damages from the county treasurer, the owner of the sheep so killed or injured shall recover the value thereof, or any part of such value, from the owner or possessor of any dog, he shall refund and repay to the county treasurer the sum so received from him, for which it shall be the duty of the supervisor of the town to bring an action against such owner, in case of his refusal, in the name of the county treasurer, and to pay into the county treasury the sum so collected.

If damages
recovered
subsequent-
ly to be
refunded.

§ 15. Any person may kill any dog which he shall see chasing, worrying or wounding any sheep, unless the same shall be done by the direction or permission of the owner of the sheep, or his servant.

Dogs cha-
sing, &c.,
sheep, to be
killed.

1 R. L., 169, § 1 & 7; 4 Cow., 351.

§ 16. The owner or possessor of every dog, to whom notice shall be given of any injury done by his dog to any sheep, or of his dog having chased or worried any sheep, shall within forty-eight hours after such notice, cause such dog to be killed; for every neglect so to do, he shall forfeit two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter, until such dog shall be killed, unless it shall satisfactorily appear to the court before which a suit shall be brought for the recovery of the said penalties, that it was not in the power of such owner or possessor to kill such dog.

After no-
tice, &c.,
owner of
dog to kill
it.

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§ 17. If any dog shall attack any person peaceably traveling on any highway, or any horse in a carriage, or upon which any person shall be mounted, and complaint thereof be made to a justice of the peace, such justice shall inquire into the complaint, and if satisfied of its truth, and that such dog is

When jus-
tice may or-
der owner
of dog to
kill it.

ART. 1.

dangerous, he shall order the owner or possessor of such dog to kill him immediately.

1 R. L., 169, § 2.

Penalty for neglect.

§ 18. The owner or possessor of any dog, who shall refuse or neglect to kill him within forty-eight hours after having received such order, shall forfeit the sum of two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter, until such dog be killed.

Supervisor to sue for penalties.

§ 19. Upon complaint being made to any supervisor of a town, of any penalties imposed by this Title having been incurred, he shall commence a suit, for the recovery thereof, in his name of office, and prosecute the same with due diligence; and the monies recovered shall be by him paid to the county treasurer, to be added to the fund herein before provided for the satisfaction of damages sustained by owners of sheep.

Who to be deemed owners of dogs.

§ 20. Every person in possession of any dog, or who shall suffer any dog to remain about his house for the space of twenty days, previous to the assessment of a tax, or previous to any injury, chasing or worrying of sheep, or any such attack made by a dog, shall be deemed the owner of such dog, for all the purposes of this Title.

Laws of 1826, 149, § 4; 1 D., 495.

See Laws of 1832, ch. 273; 1835, ch. 117; 1838, ch. 315; 1843, ch. 146; 1845, ch. 55.

TITLE XVIII.

OF THE DESTRUCTION OF WOLVES, AND OTHER NOXIOUS ANIMALS.

[By subdivision 13 of section 4 of ch. 194 of Laws of 1849, all laws for the preservation or destruction, killing or taking of wild beasts or birds, were repealed.]

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TITLE XIX.

OF BROKERAGE, STOCK-JOBING, AND PAWN-BROKERS.

ART. 1. — Regulations concerning brokers.

ART. 2. — Of stock-jobbing.

ART. 3. — Of pawn-brokers.

ARTICLE FIRST.

REGULATIONS CONCERNING BROKERS.

SEC. 1. Rate of brokerage, &c. and fee for making bond, &c. prescribed.

2. Excess over rate, may be recovered back within one year.

3. If neglected for a year, overseers of poor may recover excess.

4. Persons liable to be sued, may be compelled to discover, &c.

5. Persons discovering and returning excess, exonerated from further penalty.

Rate of brokerage, &c.

§ 1. No person shall, directly or indirectly, take or receive more than fifty cents for a brokerage, soliciting, driving, or procuring the loan or forbearance of one hundred dollars for one year, and in that proportion for a greater or less sum; nor more than thirty-eight cents, for making or renewing any

Fee for making, &c., bond, &c.

bond, bill, note or other security given for such loan or forbearance, or for any counter bond, bill, note, or other security concerning the same.

The provisions of this Title, with some variations, are taken from 1 R. L., 65, § 3 & 4; 6 B., 178.

§ 2. Every person who shall pay, deliver, or deposit any money, property, or thing in action, over and above the rate aforesaid, and his personal representatives may, within one year after such payment, delivery or deposit, sue for and recover the same of the person so taking or receiving such money, property, or thing in action, or of his personal representatives.

Excess may be recovered back.

§ 3. In case such suit shall not be brought within the time above prescribed, in good faith, or in case it shall be discontinued, or wilfully delayed, then the overseers of the poor of the city or town where the offence was committed, may, within one year after such neglect, discontinuance, or delay, sue for and recover the money, property, or thing in action, so received, delivered, or deposited, from the person receiving the same, or his personal representatives, for the use of the poor of the county.

When overseers of poor may recover excess.

§ 4. Every person who shall be liable to be sued by virtue of the foregoing provisions, shall be obliged and compellable to answer upon oath, any bill that shall be preferred against him in the court of chancery, for discovering the money, property or thing in action so illegally received, and may be compelled by the decree of such court to return the same.

Discovery, &c., compelled.

[710]

§ 5. Upon the discovery of the money, property, or other thing so illegally received, and the repayment and return thereof, with the payment of the costs of such suit, the person making such discovery and return shall be acquitted and discharged from any other punishment, forfeiture or penalty, which he may have incurred by reason of having so illegally received such money, property, or other thing so discovered and returned.

Discovery, &c., to exonerate from further penalty.

ARTICLE SECOND.

OF STOCK-JOBBER.

Sec. 6, 7, 8, constituting the whole of this article repealed by Laws of 1858, ch. 124.

ARTICLE THIRD.

OF PAWNBROKERS.

SEC. 9. Pawnbroking for more than legal interest, unless licensed, prohibited.

10. When search warrant to issue for property pledged with pawnbroker.

11. Powers of constable in executing such warrant.

12. Property seized to be restored, or delivered to claimant on giving bond.

13. Penalty and condition of bond to be given by claimant.

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§ 9. No person shall carry on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest

Pawnbroking prohibited.

TITLE 20.
except in
cities.

above that allowed by law, except in those cities where by their charters the corporations have the power of licensing such pawnbrokers. A violation of this provision shall be deemed a misdemeanor.

Search war-
rants for
property
pawned.

§ 10. Whenever any person shall make oath before any justice of the peace, police justice or assistant justice, that any property belonging to him has been embezzled or taken without his consent, and that he has reason to believe and suspect, and does suspect that such property has been pledged with any pawnbroker, such justice, if satisfied of the correctness of such suspicions, shall issue his warrant, directed to any constable of the city or place, commanding him to search for the property so alleged to have been embezzled or taken, and to seize and bring the same before such justice.

How to be
executed.

§ 11. The constable to whom any such warrant shall be directed and delivered, shall have the same power to execute the same, and shall proceed in the same manner as in the case of a search warrant issued upon a charge of larceny.

Property
seized, how
disposed of.

§ 12. Upon any property so seized by virtue of such warrant, being brought before the magistrate who issued the same, he shall cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as herein after directed; and if such bond be not executed within twenty-four hours, such justice shall cause the said property to be delivered to the person from whose possession it was taken.

Bond to be
given by
claimant.

§ 13. Such bond shall be in a penal sum equal to double the value of the property claimed, with such surety as the justice shall approve, to the person from whose possession the property was taken, with a condition that the person so claiming the same will on demand pay all damages that shall be recovered against him in any suit to be brought within thirty days from the date of such bond, by the pawnbroker from whose possession the said property was taken.

TITLE XX.

OF UNAUTHORISED BANKING, AND THE CIRCULATION OF CERTAIN NOTES OR EVIDENCES OF DEBT ISSUED BY BANKS.

- SEC.**
1. Associations for certain banking purposes, prohibited.
 2. Penalty for subscribing, becoming member or interested.
 3. Unauthorized corporations prohibited from banking.
 4. Penalty for violating last section.
 5. Loans made contrary to former sections, void.
 - 6 & 7. Penalty on unauthorised persons engaging in banking operations.
 8. Circulation of bank bills under one dollar, prohibited.
 9. Penalty, how and in what time to be sued for.
 10. Bank bills payable otherwise than in money, not to be circulated.
 11. Penalty, in what time and how to be sued for.
 12. Bank bills receivable for debts, to be deemed promissory notes.
 13. Penalties, how to be sued for and applied.

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Associa-
tions for

§ 1. No person unauthorised by law, shall subscribe to, or

become a member of, or be in any way interested in, any association, institution or company, formed, or to be formed, for the purpose of receiving deposits, making discounts or issuing notes or other evidences of debt, to be loaned or put in circulation as money; nor shall any person unauthorized by law, subscribe to or become in any way interested in, any bank or fund created, or to be created for the like purposes, or either of them.

TITLE 20.
certain
banking
purposes,
prohibited.

2 R. L., 234, § 2; see Laws of 1837, ch. 20; 4 N. Y., 463; 17 B., 378; 9 W., 351; 4 W., 500; 3 W., 296, 583; 1 San. Ch., 280; 4 Ed., 170, 334; 4 H., 442; 19 J. R., 1; 14 J. R., 206.

§ 2. Whoever shall subscribe to or become a member in any such company, or interested in any such bank or fund, shall forfeit one thousand dollars. **Penalty.**

4 N. Y., 463.

§ 3. No incorporated company, without being authorised by law, shall employ any part of its effects, or be in any way interested in any fund that shall be employed, for the purpose of receiving deposits, making discounts or issuing notes or other evidences of debt, to be loaned or put into circulation as money. **Prohibition of unauthorised corporations.**

15 N. Y., 58; 12 N. Y., 505; 9 W., 392.

§ 4. Any director, or other agent or officer, of any incorporated company, who shall violate any provision of the last section, shall forfeit one thousand dollars. **Penalty.**

§ 5. All notes and other securities for the payment of any money or the delivery of any property, made or given to any such association, institution or company, that shall be formed for the purpose expressed in the first section of this Title, or made or given to secure the payment of any money loaned or discounted by any incorporated company or its officers, contrary to the provisions of the third section of this Title, shall be void. **Notes, &c., on forbidden loans, void.**

19 J. R., 5.

§ 6. No person, association of persons or body corporate, except such bodies corporate as are expressly authorised by law, shall keep any office for the purpose of receiving deposits, or discounting notes or bills, or issuing any evidences of debt, to be loaned, or put in circulation as money: nor shall they issue any bills or promissory notes or other evidences of debt as private bankers, for the purpose of loaning them, or putting them in circulation as money, unless thereto specially authorised by law. **Persons unauthorised not to engage in certain banking operations.**

Laws of 1818, 242, § 1 & 2; see Laws of 1837, ch. 20; 16 N. Y., 511; 15 N. Y., 58; 14 N. Y., 93; 4 N. Y., 479; 2 B. Ch., 301; 6 H., 217; 5 H., 490; 25 W., 648; 20 W., 390; 17 W., 170; 4 W., 498; 6 Cow., 293; 1 S. Ch., 280; Cl. Ch., 432; 2 J. C. R., 371.

§ 7. Every person and every corporation, and every member of a corporation, who shall contravene either of the **Penalty.**

TITLE 20.

provisions in the last section, or, directly or indirectly, assent to such violation, shall forfeit one thousand dollars.

See Laws of 1837, ch. 20; 1 Hilt., 98; 2 B. Ch., 301.

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Bank bills
under one
dollar not to
be circulated.

§ 8. No person shall pay, give, or receive in payment, or in any way circulate, or attempt to circulate, any bank bill, or promissory note, check, draft, or other evidence of debt, issued by any banking company within this state, or elsewhere, which shall purport to be for the payment of a less sum of money than one dollar.

2 B. L., 235, § 2.

Penalty,
in what
time and
how to be
sued for.

§ 9. Whoever shall offend against any provision of the last section, shall forfeit the nominal amount of the bill, promissory note, check, draft, or other evidence of debt so given, paid, received, circulated, or attempted to be circulated, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence is committed, with their consent, and under their direction, in an action to be commenced within thirty days after the commission of the offence.

Bank bills
payable
otherwise
than in
money.

§ 10. No person shall give, pay, or receive in payment, or in any way circulate, or attempt to circulate, any bank bill, or any promissory note, bill, check, draft, or other evidence of debt, issued by any banking company whatever, which shall be made payable otherwise than in lawful money of the United States.

Laws of 1824, 303.

Penalty, in
what time,
and how to
be sued for.

§ 11. Every person offending against any provision of the last section, shall forfeit the nominal amount or value of such bill, note, or other evidence of debt so given, paid, received, circulated, or offered, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence shall be committed, with their consent and under their direction, in an action to be commenced, within sixty days after the commission of the offence.

Certain
bills de-
clared to be
promissory
notes.

§ 12. All bills, notes, or other instruments which shall be issued by any banking company, purporting to be receivable in payment of debts due to such company, shall be deemed and taken to be promissory notes for the payment, on demand, of the sum or value expressed in such instrument; and such sum shall be recoverable by the holder or bearer of such instrument, in like manner as if the same were a promissory note.

Laws of 1816-17, 12.

Penalties,
how to be
sued for and
applied.

§ 13. The penalties prescribed in this Title, where no other provision is made, shall be recovered by suits in the name of the people of this state, to be prosecuted by the district attorneys of the counties respectively where the offences may be committed. All penalties herein prescribed, when col-

lected, shall be paid to the county treasurer of the county, for the use of the poor thereof.

See Laws of 1830, ch. 295; 1837, ch. 20; 1830, ch. 243; 1833, ch. 315.

TITLE XXI.

[714]

OF INSURANCES ON PROPERTY IN THIS STATE MADE IN FOREIGN COUNTRIES, AND BY INDIVIDUALS AND ASSOCIATIONS UNAUTHORISED BY LAW.

- SEC. 1. Insurances by foreigners or their agents, prohibited.
 2. Penalty, and application thereof.
 3. Premium to be paid by agents of companies of other states.
 4. Persons not to act as agents without giving bond.
 5. Penalty for making, &c., insurance, without having given bond.
 6. Penalties how collected and applied.

§ 1. No person, association, or company of persons, residing in any foreign country, and no incorporation established in a foreign country, nor any person in behalf of them or any of them, shall directly or indirectly make any contract of insurance, or by way of insurance, against loss or injury by fire, upon any house, building or goods, situated or being in this state.

Certain insurances by foreigners prohibited.

Laws of 1814, 52, ch. 49, §§ 1 & 2.

§ 2. Whoever shall offend against the foregoing provision, shall forfeit one thousand dollars, for the use of the poor of the county where such illegal contract shall be made. Penalty.

§ 3. There shall be paid into the treasury of this state, on the first day of February in each year, by every person who shall act as agent for any individuals or associations of individuals not incorporated and authorised by the laws of this state to effect insurances against losses by fire, or against marine losses and risks, although such individuals or association may be incorporated for that purpose by any other state, or country, the sum of two dollars upon the hundred dollars, and at that rate upon the amount of all premiums, which, during the year ending on the preceding first day of September, shall have been received by such agent or any other person for him, or shall have been agreed to be paid, for any insurances effected, or agreed to be effected or procured by him as such agent against loss or injury by fire, or against marine losses and risks.

Premium to be paid by agents of certain insurance companies of other states.

Laws of 1824, 340; 1837, ch. 30.

§ 4. No person shall, as agent for any individuals or association, effect or agree to effect any insurances, upon which the duty above mentioned is required to be paid, or as agent or otherwise procure such insurance to be effected, until he shall have executed and delivered to the comptroller a bond to the people of this state, in the penal sum of one thousand dollars, with such sureties as the comptroller shall approve, with a condition that he will annually render to the comptroller, on the first day of February in each year, a just and

Bond to be given by agents.

TITLE XI.

[715]
Its penalty
and condi-
tion.

true account of all premiums which, during the year ending on the first day of September preceding such report, shall have been received by him or by any other person for him, or agreed to be paid for any insurance against loss or injury by fire, which shall have been effected by him or agreed to be effected as such agent, or which shall have been procured by him from any individuals or association not authorised as aforesaid; and that he will annually, on the first day of February in each year, pay into the treasury of this state, two dollars upon the hundred dollars, and at that rate, upon the amount of such premiums.

Laws of 1824, 340; 1837, ch. 30.

Penalty.

§ 5. Every person who shall effect, agree to effect, or procure any insurance specified in the preceding third section of this Title, without having executed and delivered such bond, shall forfeit five hundred dollars, for the use of the poor of the county where the offence shall be committed.

Penalties
how col-
lected and
applied.

§ 6. The penalties imposed in this Title shall be collected in the name of the people of this state, by the district attorney of the county where the offence shall be committed, for the use of the poor thereof.

See Laws of 1829, ch. 336; 1849, ch. 178; 1857, ch. 548; 1858, ch. 255.

[The preceding twenty Chapters, constituting the FIRST PART OF THE REVISED STATUTES, were finally passed as one Act, by the Senate and Assembly, on the 3d of December, 1827, and were on the same day approved and signed by DE WITT CLINTON, Governor of the State.]

REVISED STATUTES

[717]

OF THE

STATE OF NEW YORK.

PART II.

AN ACT concerning the acquisition, the enjoyment and the transmission of property, real and personal; the domestic relations, and other matters connected with private rights.

WHEREAS it is expedient that the several statutes of this state, relating to the acquisition, the enjoyment and the transmission of property, real and personal; the domestic relations, and certain matters connected with private rights; should be consolidated and arranged in appropriate chapters, titles and articles; that the language thereof should be simplified; and that omissions and other defects should be supplied and amended: Therefore

The People of the State of New-York, represented in Senate and Assembly, do declare and enact as follows:

CHAP. I.

Of Real Property, and of the Nature, Qualities and Alienation of Estates therein.

(Took effect January 1, 1880.)

TITLE 1. — Of the tenure of real property, and the persons capable of holding and conveying estates therein.

TITLE 2. — Of the nature and qualities of estates in real property, and the alienation thereof.

TITLE 1.**TITLE 3.** — Of estates in dower.**TITLE 4.** — Of estates for years, and at will, and the rights and duties of landlords and tenants.**TITLE 5.** — Miscellaneous provisions of a general nature.**[718]****TITLE I.****OF THE TENURE OF REAL PROPERTY, AND THE PERSONS CAPABLE OF HOLDING AND CONVEYING ESTATES THEREIN.****ART. 1.** — Of the tenure of real property.**ART. 2.** — Of the persons capable of holding and conveying lands.**ARTICLE FIRST.****OF THE TENURE OF REAL PROPERTY.****SEC. 1.** People of this state deemed original owners.

2. Escheated land to be held subject to trusts, &c.

3. Lands declared allodial; feudal tenures abolished.

4. Abolition of tenures not to affect certain rights, or powers of courts.

5. Guardianship of infants owning lands, to whom it belongs.

6. Provisions respecting guardians in soccage, to apply to them.

7. Superseded by appointment of other guardian.

The People,
original
owners of
lands in this
state.

§ 1. The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands, the title to which shall fail, from a defect of heirs, shall revert or escheat to the people.

1 R. L., 380, § 2; 9 N. Y., 319; 6 N. Y., 467; 15 B., 94; 8 B., 194; 25 W., 219; 17 W., 312.

To hold es-
cheated
land sub-
ject to
trusts,
&c.
How trusts,
&c., execu-
ted.

§ 2. All escheated lands, when held by the state, or its grantees, shall be subject to the same trusts, incumbrances, charges, rents, and services, to which they would have been subject, had they descended; and the court of chancery shall have power to direct the attorney-general to convey such lands to the parties equitably entitled thereto, according to their respective rights, or to such new trustee as may be appointed by such court.

27 B., 149.

All lands
allodial.

§ 3. All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates; and all feudal tenures, of every description, with all their incidents, are abolished.

1 R. L., 70, § 2 to 6; 6 N. Y., 467; 27 B., 149.

Certain
rights, &c.,
not to be
affected.

§ 4. The abolition of tenures shall not take away or discharge, any rents or services certain, which at any time heretofore, have been, or hereafter may be, created or reserved; nor shall it be construed to affect or change the powers or jurisdiction of any court of justice in this state.

27 B., 149.

Who to be
guardians

§ 5. Where an estate in lands shall become vested in an

ART. 2
of infants
owning
lands.

infant, the guardianship of such infant, with the rights, powers and duties of a guardian in soccage, shall belong,

1. To the father of the infant,
2. If there be no father, to the mother;
3. If there be no father or mother, to the nearest and eldest relative of full age, not being under any legal incapacity; and as between relatives of the same degree of consanguinity, males shall be preferred.

31 B., 289; 30 B., 635; 7 Cow., 38; 5 Pal., 41; 15 W., 633.

§ 6. To every such guardian, all statutory provisions that are or shall be in force, relative to guardians in soccage, shall be deemed to apply.

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Subject to
certain
laws.

30 B., 635.

§ 7. The rights and authority of every such guardian shall be superseded, in all cases where a testamentary or other guardian shall have been appointed under the provisions of the third Title of the eighth Chapter of this act.

When su-
perseded.

ARTICLE SECOND.

OF THE PERSONS CAPABLE OF HOLDING AND CONVEYING LANDS.

SEC. 8. Citizens of U. States capable of holding, &c. lands in this state.

9. Titles of possessors at certain time, not to be affected by alienism.

10. Who capable of aliening lands.

11. Purchases from Indians void, &c.

12. Indians cannot dispose of or contract for, &c. land, except, &c.

13. Heirs of certain Indian patentees, may convey.

14. Occupants of lands so conveyed to be paid for improvements.

15. Resident aliens may make certain deposition.

16. Right thereafter to hold lands and make dispositions of them.

17. Not to hold lands acquired previous.

18. If alien die, his heirs may inherit lands.

19. Aliens may take mortgages on sales of lands.

20. Liabilities and incapacities of aliens holding lands.

§ 8. Every citizen of the United States is capable of holding lands within this state, and of taking the same by descent, devise or purchase.

Who capa-
ble to hold
lands.

§ 9. No title or claim of any citizen of this state, who was in the actual possession of lands on the twenty-first day of April, one thousand eight hundred and twenty-five, or at any time before, shall be defeated or prejudiced on account of the alienism of any person through or from whom his title or claim to such lands may have been derived.

Certain ti-
tles not to
be affected
by alienism.

§ 10. Every person capable of holding lands, (except idiots, persons of unsound mind, and infants,) seised of, or entitled to, any estate or interest in lands, may alien such estate or interest at his pleasure, with the effect, and subject to the restrictions and regulations provided by law.

Who capa-
ble of alien-
ing lands.

1 R. L., 70, § 1, and 74, § 5; 6 N. Y., 467; 4 N. Y., 15; 21 B., 551; 13 B., 147; 12 How. P. R., 441; 26 W., 297.

§ 11. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand

Certain pur-
chases from
Indians,
void.

TITLE I.

seven hundred and seventy-five, or which may hereafter be made, with the Indians in this state, is valid, unless made under the authority and with the consent of the legislature of this state.

20 J. R., 693.

Sales, &c.,
by Indians,
prohibited.

§ 12. No Indian residing within this state, can make any contract for or concerning the sale of any lands within this state, or in any manner give, sell, devise or otherwise dispose of any such lands, or any interest therein, without the authority and consent of the legislature of this state, except as herein after provided.

2 R. L., 153, § 1; 8 Cow., 190; see Laws of 1843, ch. 87; 1847, ch. 486; 1849, ch. 420.

[799]
Heirs of
certain In-
dians may
convey, &c.

§ 13. The heirs of every Indian to whom land has been granted for military services rendered during the war of the revolution, shall be and are capable of taking and holding any such lands by descent, in the same manner as if such heirs were citizens of this state, at the death of their ancestors; and every conveyance executed by such patentee, or his heirs, after the seventh day of March, one thousand eight hundred and nine, to any citizen of this state, for any such land, shall be valid, if executed with the approbation of the surveyor-general of this state, to be expressed by an endorsement made on such conveyance and signed by him.

2 R. L., 175, § 55; 15 J. R., 264.

Improve-
ments to be
paid for.

§ 14. If any land so conveyed shall have been occupied or improved, at the time of such conveyance, the occupant, his heirs or assigns, shall be entitled to be paid for the improvements made by them, or either of them, in the manner provided in the second section of the act, entitled "An act concerning lands in the military tract," passed April 8, 1813.

Resident
aliens may
make depo-
sition, &c.,
to be filed,
&c., by sec-
retary of
state.

§ 15. Any alien who has come, or who may hereafter come into the United States may make a deposition or affirmation in writing, before any officer authorised to take the proof of deeds to be recorded, that he is a resident in this state, and intends always to reside in the United States, and to become a citizen thereof, as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require, to enable him to obtain naturalization; which shall be certified by such officer, and be filed and recorded by the secretary of state, in a book to be kept by him for that purpose. And such certificate, or a certified copy thereof, shall be evidence of the facts therein contained.

Laws of 1825, 427, § 1, 2 & 3; 1834, ch. 272; 20 N. Y., 320; 1 Ed., 512; 10 W., 379.

Entitled
thereafter
to hold
lands;
may dispose
of them,
but not to
lease.

§ 16. Any alien who shall make and file such deposition, shall thereupon be authorised and enabled to take and hold lands and real estate, of any kind whatsoever, to him, his heirs and assigns forever, and may, during six years thereafter, sell, assign, mortgage, devise and dispose of the same, in any

TITLE 2

manner, as he might or could do if he were a native citizen of this state, or of the United States, except that no such alien shall have power to lease or demise any real estate, which he may take or hold by virtue of this provision, until he becomes naturalized.

4 Ed., 407; 20 W., 230; 21 W., 60.

§ 17. Such alien shall not be capable of taking or holding any lands or real estate, which may have descended, or been devised or conveyed to him previously to his having become such resident, and made such deposition or affirmation as aforesaid.

Not to hold lands previously acquired.

See Laws of 1845, ch. 115; 20 N. Y., 320; 21 W., 62; 4 Ed., 407.

§ 18. When such alien shall die within six years after making and filing such deposition, intestate, leaving heirs inhabitants of the United States, such heirs shall take by descent, and hold any real estate of which such alien died seised in the same manner as they would have inherited if such alien had been, at the time of his death, a citizen of this state.

Heirs to inherit in certain cases.

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Laws of 1826, 348, § 2.

§ 19. If any alien shall sell and dispose of any real estate, which he is entitled by law to hold and dispose of, he, his heirs and assigns, may take mortgages in his or their own name as a collateral security for the purchase money due thereon, or any part thereof; and such mortgagee, his heirs, assigns or legal representatives, or any of them, may re-purchase any of the said premises, on any sale thereof made by virtue of any power contained in such mortgage, or by virtue of any judgment or decree of any court of law or equity, rendered in order to enforce the payment of any part of such money, and may hold the same premises, in the like manner, and with the same authority, as the same were originally held by such mortgagor.

On sale of certain lands, aliens may take mortgages, and may re-purchase lands sold in certain cases.

2 R. L., 542, § 2; 20 N. Y., 320.

§ 20. Every alien who shall hold any real estate by virtue of any of the foregoing provisions, shall be subject to duties, assessments, taxes and burthens, as if he were a citizen of this state; but shall be incapable of voting at any election, or of being elected or appointed to any office, or of serving on any jury.

Liabilities and incapacities of certain aliens.

Laws of 1825, 427, § 4.

See Laws of 1843, ch. 87; 1845, ch. 115; 1834, ch. 272; 1857, ch. 576.

TITLE II.

OF THE NATURE AND QUALITIES OF ESTATES IN REAL PROPERTY, AND THE ALIENATION THEREOF.

ART. 1. — Of the creation and division of estates.

ART. 2. — Of uses and trusts.

ART. 3. — Of powers.

ART. 4. — Of alienation by deed.

TITLE 1.

ARTICLE FIRST.

OF THE CREATION AND DIVISION OF ESTATES.

- SEC. 1.** Enumeration of estates in land.
2. Estates of inheritance, a fee simple.
 - 3 & 4. Estates tail abolished; remainders thereon, when valid.
 5. What to be the estates of freehold, chattels real and chattel interests.
 6. Estates for life, when freehold, when chattels real.
 7. Estates in possession and in expectancy.
 8. Definition of those estates respectively.
 9. Enumeration of estates in expectancy.
 10. Definition of a future estate.
 11. When a future estate is a remainder.
 12. Definition of a reversion.
 13. When future estates are vested, when contingent.
 14. Certain future estates void; when power of alienation deemed suspended.
 15. How long power of alienation may be suspended.
 16. A contingent remainder in fee may be created.
 17. Limitation of successive estates for life.
 18. Remainders upon estates for life of third person.
 19. When remainder to take effect.
 20. Contingent remainder on a term for years.
 21. Estates for life, as remainders, on a term for years.
 22. Meaning of "heirs" and "issue" in certain remainders.
 23. Limitations, to apply to chattel interests in lands.
 24. Remainders, future and contingent estates, how created.
 25. Future estates, in the alternative, may be created.
 26. Future estates not to be void on ground of improbability, &c.
 27. Remainder upon a contingency.
 28. Heirs of a tenant for life, to take as purchasers.
 29. Construction of certain remainders.
 - 30 & 31. In what cases posthumous children to take, or defeat, future estates.
 32. Expectant estates not to be defeated by owners of precedent estate.
 33. But such estates may be defeated by means provided by the grantor.
 34. Remainder not to be defeated by termination of precedent estate.
 35. Expectant estates descendible, devisable and alienable.
 36. Limitations on the disposition of future profits.
 37. Accumulations of profits of land, may be directed.
 38. Other directions for accumulation, when void in part, when wholly void.
 39. When profits, may be applied to education, &c. of infants.
 40. To whom rents and profits of lands, in certain cases to belong.
 41. What deemed the time of creation of expectant estates.
 42. Expectant estates not herein enumerated, abolished.
 43. Nature of estates in severalty, joint tenancy and in common.
 44. What to be deemed estates in common, what in joint tenancy.

Enumera-
tion of es-
tates in
land.

§ 1. Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance.

11 N. Y., 494; 8 N. Y., 52; 26 B., 210; 22 B., 402.

What estate
a fee simple

§ 2. Every estate of inheritance, notwithstanding the abolition of tenures, shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be termed a fee simple absolute, or an absolute fee.

28 B., 339; 1 B., 576.

Estates tail
abolished.
Their

§ 3. All estates tail are abolished; and every estate which would be adjudged a fee tail, according to the law of this

state, as it existed previous to the twelfth day of July, one thousand seven hundred and eighty-two, shall hereafter be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute.

1 R. L., 52, § 1; 6 N. Y., 421; 2 N. Y., 357, 387; 5 D., 46; 12 J. R., 176; 3 B., 247.

ART. 1.
nature
declared.

§ 4. Where a remainder in fee shall be limited upon any estate, which would be adjudged a fee tail, according to the law of this state, as it existed previous to the time mentioned in the last section, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker, without issue living at the time of such death.

Certain
remainders
valid.

5 D., 35; 2 D., 9, 336.

§ 5. Estates of inheritance and for life, shall continue to be denominated estates of freehold; estates for years, shall be chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on executions.

Freeholds;
chattels
real; chat-
tel interests

11 N. Y., 498; 8 N. Y., 52; 25 B., 108; 17 B., 396; 12 B., 481; 11 B., 499; 2 B., 207, 613; 1 E. D. S., 333.

§ 6. An estate during the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

Estates for
life of third
person
when free-
hold, &c.

3 H., 442; 5 D., 414.

§ 7. Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy.

In posses-
sion or
expectancy.

1 S. Ch., 342.

§ 8. An estate in possession, is where the owner has an immediate right to the possession of the land. An estate in expectancy, is where the right to the possession is postponed to a future period.

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Definition
of those
estates.

§ 9. Estates in expectancy, are divided into,

Enumera-
tion of es-
tates in
expectancy

1. Estates commencing at a future day, denominated future estates: and,

2. Reversions.

6 N. Y., 360.

§ 10. A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the dermination, by lapse of time or otherwise, of a precedent estate, created at the same time.

Future es-
tates.

6 N. Y., 360; 31 B., 562.

§ 11. Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

When they
are remain-
ders.

6 N. Y., 360; 31 B., 562; 5 Pal., 466.

§ 12. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing

Reversions.

TITLE 2.

in possession on the determination of a particular estate granted or devised.

Vested and
contingent
future
estates.

§ 13. Future estates are either vested or contingent. They are vested, when there is a person in being, who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate. They are contingent, whilst the person to whom, or the event upon which they are limited to take effect, remains uncertain.

18 N. Y., 418; 6 N. Y., 360; 31 B., 562; 28 B., 367; 5 B., 101; 2 B., 248.

Void future
estates.

Suspending
power of
alienation.
4

§ 14. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation for a longer period than is prescribed in this Article. Such power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed.

9 N. Y., 403; 6 N. Y., 467; 5 N. Y., 413; 31 B., 336; 30 B., 321; 10 B., 388; 9 B., 344; 8 B., 28; 7 B., 592; 5 B., 101; 4 B., 89; 3 B., 244; 1 D., 57; 26 W., 21, 236; 24 W., 661; 20 W., 564; 18 W., 257; 16 W., 61, 324; 14 W., 265; 9 Pal., 110, 521; 8 Pal., 106, 303, 486; 7 Pal., 230, 534; 5 Pal., 172, 318, 602; 4 Pal., 342; 4 S. C., 539.

How long
it may
be suspen-
ded.

§ 15. The absolute power of alienation, shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate, except in the single case mentioned in the next section.

9 N. Y., 403; 6 N. Y., 467, 510; 7 N. Y., 548; 5 N. Y., 413; 31 B., 336; 17 B., 25; 10 B., 388; 9 B., 344; 8 B., 20; 7 B., 592; 5 B., 438; 16 W., 61; 14 W., 265; 13 W., 441; 5 D., 646; 1 D., 449; 5 Pal., 220; 4 S. Ch., 414, 525, 528; 2 S. Ch., 56; 2 Du., 57; 5 S. C., 174, 363; 4 S. S. C., 539.

Contingent
remainder
in fee.

§ 16. A contingent remainder in fee, may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, shall die under the age of twenty-one years, or upon any other contingency, by which the estate of such persons may be determined before they attain their full age.

26 B., 233; 1 S. Ch., 178.

Limitation
of success-
ive estates
for life.

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§ 17. Successive estates for life shall not be limited, unless to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and upon the death of those persons, the remainder shall take effect in the same manner as if no other life estates had been created.

9 N. Y., 403; 8 B., 538; 7 B., 241; 6 B., 502; 16 W., 324.

Remainder
upon cer-
tain estates
for life.

§ 18. No remainder shall be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created upon such an estate in a term for years, unless it be for the whole residue of such term.

§ 19. When a remainder shall be created upon any such life estate, and more than two persons shall be named, as the persons during whose lives the life estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced.

ART. 1.
When remainder to take effect in certain cases.

§ 20. A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited, be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof.

Contingent remainder on a term for years.

§ 21. No estate for life, shall be limited as a remainder on a term of years, except to a person in being, at the creation of such estate.

Remainder of estates for life.

§ 22. Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue," shall be construed to mean heirs or issue, living at the death of the person named as ancestor.

Meaning of "heirs" and "issue" in certain remainders.

13 N. Y., 273; 3 B., 387; 3 W., 521; 3 Pal., 30.

§ 23. All the provisions contained in this Article, relative to future estates, shall be construed to apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years, shall not be suspended for a longer period than the absolute power of alienation can be suspended, in respect to a fee.

Limitations on chattels real.

3 B. Ch. 305; 5 D., 652; 3 Pal., 30.

§ 24. Subject to the rules established in the preceding sections of this Article, a freehold estate as well as a chattel real, may be created, to commence at a future day; an estate for life may be created, in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this Article.

Remainders future and contingent estates, how created.

3 B., 387; 7 Pal., 534.

§ 25. Two or more future estates, may also be created, to take effect in the alternative, so that if the first in order shall fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

Two or more future estates.

§ 26. No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect.

Certain future estates not to be void.

5 Pal., 463.

§ 27. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be con-

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Remainder upon a contingency.

TITLE 2

Heirs of a tenant for life, when to take as purchasers.

strued a conditional limitation, and shall have the same effect as such limitation would have by law.

§ 28. Where a remainder shall be limited to the heirs, or heirs of the body of a person to whom a life estate, in the same premises, shall be given, the persons who, on the termination of the life estate, shall be the heirs, or heirs of the body of such tenant for life, shall be entitled to take as purchasers, by virtue of the remainder so limited to them.

11 N. Y., 401; 4 Kent. Com., 224.

Construction of certain remainders.

§ 29. When a remainder on an estate for life, or for years, shall not be limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

Posthumous children.

§ 30. Where a future estate shall be limited to heirs or issue, or children, posthumous children shall be entitled to take, in the same manner as if living at the death of their parent.

2 B., 248.

Ib.

§ 31. A future estate depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Expectant estates not to be defeated, &c.

§ 32. No expectant estate can be defeated or barred by any alienation, or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseisin, forfeiture, surrender, merger or otherwise.

When to be defeated.

§ 33. The last preceding section shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means, which the party creating such estate shall, in the creation thereof, have provided for or authorised; nor shall an expectant estate thus liable to be defeated, be on that ground adjudged void in its creation.

Remainders not to be defeated in certain cases.

§ 34. No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect, in the same manner and to the same extent, as if the precedent estate had continued to the same period.

18 N. Y., 418.

Qualities of expectant estates.

§ 35. Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

12 N. Y., 133; 31 B., 562; 7 Pai., 76.

Future profits of lands.

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§ 36. Dispositions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this Article, in relation to future estates in lands.

17 N. Y., 567; 2 B., 248; 3 B. Ch., 92; 5 Pai., 480; 4 Pai., 328; 2 S. Ch., 474.

ART. 1.
Accumulation of profits of lands.

§ 37. An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed, sufficient to pass real estate, as follows :

1. If such accumulation be directed to commence on the creation of the estate, out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority :

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this Article permitted for the vesting of future estates and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority.

17 B., 25 ; 4 Pai., 328 ; 4 S. S. C., 442.

§ 38. If, in either of the cases mentioned in the last section, the direction for such accumulation shall be for a longer term than during the minority of the persons intended to be benefitted thereby, it shall be void as respects the time beyond such minority. And all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

Other directions, when void in part.

When wholly void.

2 B. Ch., 518 ; 17 B., 25 ; 4 S. S. C., 442 ; 5 Pai., 480.

§ 39. Where such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the chancellor, upon the application of their guardian, may direct a suitable sum out of such rents and profits to be applied to their maintenance and education.

Applications of profits, &c. to support, &c., of infants.

6 Pia., 136.

§ 40. When in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation or of the ownership, during the continuance of which, the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

In certain cases, who entitled to profits of land.

23 N. Y., 83 ; 15 N. Y., 324 ; 28 B., 143 ; 17 B., 84 ; 2 B. Ch., 518.

§ 41. The delivery of the grant, where an expectant estate is created by grant ; and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

Expectant estates, when deemed created.

3 B., 387.

§ 42. All expectant estates, except such as are enumerated and defined in this Article, are abolished.

Certain expectant estates abolished.

§ 43. Estates, in respect to the number and connexion of their owners, are divided into estates in severalty, in joint

Estates in severalty, joint

TITLE 2.
tenacity
and in com-
mon.

tenancy and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this Chapter.

[797]
What to be
in common,
what in
joint te-
nancy.

§ 44. Every estate granted or devised to two or more persons, in their own right, shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate, vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested, as to estates hereafter to be granted or devised.

1 B. L., 54, § 6 & 7; 27 B., 272; 5 J. C. R., 431.

ARTICLE SECOND.

OF USES AND TRUSTS.

SEC. 45. Uses and trusts, not herein authorised, abolished.

46. Existing executed uses, confirmed as legal estates.

47. Persons entitled to possession of lands, declared the legal owners thereof.

48. Last section not to affect active trusts.

49. No estate granted for the use of another, to vest in the trustees.

50. Previous sections not to apply to resulting or implied or express trusts.

51. Grant to one, for consideration paid by another, vests title in grantee.

52. But trust to result in favor of creditors of person paying consideration.

53. 51st section not to extend to certain cases.

54. Purchasers in good faith, not to be affected by implied trusts.

55. For what purposes express trusts may be created.

56. Certain devises in trust, to be deemed powers.

57. In certain cases, profits of land liable to creditors.

58. Express trusts not before authorised, to be powers in trust.

59. In such case, land to remain in and descend to persons entitled.

60. Trustees under valid express trusts, to have whole estate.

61. Qualification of last section.

62. Estates not included in express trust, to remain in grantor.

63. Powers of parties interested in certain trusts.

64. Conveyances not declaring trust, absolute in certain cases.

65. Sales, &c., contrary to the trust, void.

66. Misapplication of money by trustees, not to affect others.

67. Estate of trustee to cease when purpose ceases.

68. Disposition of trust, on death of surviving trustee.

69. When and how trustee may resign.

70. When and how trustee may be removed.

71. Appointment of trustees in place of those resigning or removed, &c.

72. Three last sections applicable only to express trusts.

Certain
uses and
trusts abol-
ished.

§ 45. Uses and trusts, except as authorised and modified in this Article, are abolished; and every estate and interest in lands, shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this Chapter.

15 N. Y., 477; 12 N. Y., 403; 29 B., 657; 27 B., 272; 17 B., 105; 11 B., 407; 9 B., 340; 6 B., 484; 4 D., 442; 3 S. S. C., 360; 24 W., 661; 18 How. P. R., 132.

Executed
uses, exist-
ing.

§ 46. Every estate which is now held as an use, executed under any former statute of this state, is confirmed as a legal estate.

6 B., 484; 4 D., 385.

§ 47. Every person, who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

1 R. L., 72, § 1, 2 & 3; 23 N. Y., 377; 10 N. Y., 271; 9 N. Y., 403; 7 N. Y., 570; 6 N. Y., 460; 3 N. Y., 535; 30 B., 320; 13 B., 92; 9 B., 519; 6 B., 484; 5 B., 190; 1 B., 33; 1 B. Ch., 20, 220; 2 H., 574, 491; 7 Pai., 534, 185-193; 4 Pai., 404; 2 S. Ch., 296; 21 W., 147; 17 J. R., 350; 14 W., 179.

ART. 2.
Right to possession of land creates legal ownership.

§ 48. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees, is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

6 B., 484; 4 Pai., 352; 4 D., 399; 7 Pai., 182.

Active trusts not affected by last section. (728)

§ 49. Every disposition of lands, whether by deed or devise hereafter made, shall be directly to the person in whom the right to the possession and profits, shall be intended to be invested, and not to any other, to the use of, or in trust for, such person; and if made to one or more persons, to the use of, or in trust for, another, no estate or interest, legal or equitable, shall vest in the trustee.

1 R. L., 72, § 1, 2 & 3; 23 N. Y., 377; 10 N. Y., 271; 7 N. Y., 570; 6 N. Y., 460; 3 N. Y., 535; 26 B., 239, 479; 6 B., 98; 1 D., 57; 9 B., 516.

Trustees of estate for use of another, take no interest.

§ 50. The preceding sections in this Article shall not extend to trusts arising, or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts, as are herein after authorised and defined.

7 N. Y., 570; 2 N. Y., 373; 9 B., 589; 4 D., 439; 16 J. R., 197; 5 J. C. R., 1; 3 Pai., 390; 4 S. S. C., 524.

Preceding sections qualified.

§ 51. Where a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

1 R. L., 74, § 4; 15 N. Y., 478; 10 N. Y., 271; 29 B., 484; 16 B., 376; 12 B., 653; 10 B., 102; 6 B., 484; 5 B., 57; 2 Ed., 619; 14 How. P. R., 11; 8 Pai., 226; 2 B. Ch., 582.

Grant to one for money paid by another, no trust to result.

§ 52. Every such conveyance shall be presumed fraudulent, as against the creditors, at that time, of the person paying the consideration; and where a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

22 N. Y., 566; 15 N. Y., 478; 10 N. Y., 271; 31 B., 394; 29 B., 484; 12 B., 653; 6 B., 484; 4 D., 442; 1 J. Ca., 153; 3 J. R., 216; 11 J. R., 91; 13 J. R., 463; 16 J. R., 197; 1 J. C. R., 582; 2 J. C. R., 405; 3 Pai., 478; 4 Pai., 578; 10 Pai., 568; 18 W., 257; 3 B., 555.

Except for benefit of creditors, &c.

§ 53. The provisions of the preceding fifty-first section shall

Section 51 qualified.

TITLE I.

not extend to cases, where the alienee named in the conveyance, shall have taken the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or where such alienee, in violation of some trust, shall have purchased the lands so conveyed, with monies belonging to another person.

18 N. Y., 515; 11 B., 407; 16 B., 376; 17 B., 103.

Purchasers protected.

§ 54. No implied or resulting trust shall be alleged or established, to defeat or prejudice the title of a purchaser, for a valuable consideration, and without notice of such trust.

22 N. Y., 566.

For what purposes express trusts may be created.

§ 55. Express trusts may be created, for any or either of the following purposes:

1. To sell lands for the benefit of creditors:
2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon:
3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the first Article of this Title:
- (799) 4. To receive the rents and profits of lands, and to accumulate the same, for the purposes and within the limits prescribed in the first Article of this Title.

23 N. Y., 377; 17 N. Y., 567; 12 N. Y., 403; 7 N. Y., 257; 6 N. Y., 578; 5 N. Y., 413, 557; 2 N. Y., 306; 31 B., 336; 25 B., 395; 23 B., 498; 20 B., 639; 18 B., 473; 9 B., 340, 585; 5 B., 101, 144, 444, 613; 3 B. Ch., 92; 2 B. Ch., 517; 3 H., 101; 5 D., 651; 4 D., 389; 1 D., 57; 7 Pai., 234, 275; 5 Pai., 220, 461; 22 W., 486; 14 W., 265; 11 W., 240; 2 Ed., 91; 4 S. Ch., 414; 5 S. S. C., 363; 3 S. S. C., 502; 3 Ab., 403; 13 How. P. R., 157; 8 How. P. R., 389; Laws of 1830, ch. 320, § 10; 2 Du., 59.

Certain devices in trust, to be deemed powers.

§ 56. A devise of lands to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

18 N. Y., 107; 2 B., 537; 2 Ed., 569; 2 H., 569.

Profits of land liable to creditors in certain cases.

§ 57. Where a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable, in equity, to the claims of the creditors of such person, in the same manner as other personal property, which cannot be reached by an execution at law.

6 N. Y., 578; 18 B., 469; 1 B. Ch., 36; 8 Pai., 85; 5 Pai., 586; 2 Ed., 379; 3 S. S. C., 541; 14 N. Y., 41; 11 Pai., 140.

Other express trusts, to be deemed powers in trust.

§ 58. Where an express trust shall be created, for any purpose not enumerated in the preceding sections, no estate shall vest in the trustees; but the trust, if directing or autho-

rising the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers, contained in the third Article of this Title.

12 N. Y., 404; 7 N. Y., 570; 23 B., 499; 9 B., 519; 1 B., 58; 9 Pal., 116; 8 Pal., 120; 3 S. Ch., 554; 8 W., 661; 18 W., 257; 22 W., 483.

§ 59. In every case where the trust shall be valid as a power, the lands to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

And land, &c., to descend to persons entitled.

§ 60. Every express trust, valid, as such, in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust. The persons for whose benefit the trust is created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

Trustees of express trusts to have whole estate.

21 N. Y., 576; 17 N. Y., 567; 10 N. Y., 271; 9 N. Y., 413; 6 N. Y., 578; 3 N. Y., 535; 31 B., 336; 25 B., 395; 2 B., 601; 1 B. Ch., 36; 2 Ed., 559; 7 How. P. R., 349; 4 E. D. S., 134; 3 S. S. C., 531.

§ 61. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates, shall belong, in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust. Every such grantee or devisee shall have a legal estate in the lands, as against all persons, except the trustees and those lawfully claiming under them.

Last section qualified.

21 N. Y., 576; 31 B., 336; 25 B., 395; 4 E. D. S., 134.

§ 62. Where an express trust is created, every estate and interest not embraced in the trust and not otherwise disposed of, shall remain in, or revert to, the person creating the trust, or his heirs, as a legal estate.

Interests remaining in grantor of express trust.

21 N. Y., 576.

§ 63. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable.

[730] Powers over trust, of party interested.

19 N. Y., 455; 12 N. Y., 401; 6 N. Y., 578; 31 B., 336; 26 B., 453; 7 B., 235; 5 B., 198; 1 B. Ch., 36; 8 Pal., 85; 7 Pal., 521; 5 Pal., 586; 4 Ed., 507; 3 S. Ch., 554; 1 S. Ch., 341; 5 S. S. C., 363; 3 S. S. C., 541; 22 W., 549; 18 How. P. R., 54; 16 W., 61; 24 W., 641.

§ 64. Where an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute, as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

Effect of omitting trust in conveyance.

29 B., 484; 22 B., 97.

TITLE 2
Certain
sales, &c.,
by trustees,
void.

§ 65. Where the trust shall be expressed in the instrument creating the estate, every sale, conveyance or other act of the trustees, in contravention of the trust, shall be absolutely void.

20 N. Y., 21; 18 N. Y., 107; 12 N. Y., 394; 6 N. Y., 360; 31 B., 336; 30 B., 321; 20 B., 404; 7 How. P. R., 349.

Others not
to be affect-
ed by mis-
conduct of
trustees.

§ 66. No person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorised to receive, shall be responsible for the proper application of such money, according to the trust; nor shall any right or title, derived by him from such trustee, in consideration of such payment, be impeached or called in question, in consequence of any misapplication, by the trustee, of the monies paid.

10 Pal., 282; 12 N. Y., 403; 30 B., 133; 22 B., 99; 7 J. C. R., 150; 16 How. P. R., 357.

When es-
tate of trust-
tee to cease.

§ 67. When the purposes for which an express trust shall have been created, shall have ceased, the estate of the trustees shall also cease.

5 Pal., 458; 4 Pal., 404; 2 S. Ch., 296; 9 B., 516.

Trust estate
not to de-
scend, &c.

Trust to
vest in
chancery.

§ 68. Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the court of chancery, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose, under the direction of the court.

27 B., 407; 9 B., 638; 7 Pal., 107; 5 Pal., 560.

When and
how trustee
may resign.

§ 69. Upon the petition of any trustee, the court of chancery may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms, as the rights and interests of the persons interested in the execution of the trust, may require.

19 N. Y., 455; 25 B., 99; 1 B. Ch., 568; 3 Pal., 420.

When and
how trustee
may be re-
moved.

§ 70. Upon the petition or bill of any person interested in the execution of a trust, and under such regulations as for that purpose shall be established, the court of chancery may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who, for any other cause, shall be deemed an unsuitable person to execute the trust.

9 N. Y., 176; 2 B., 447; 1 E. D. S., 572.

How places
supplied.

§ 71. The chancellor shall have full power to appoint a new trustee, in place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause the trust to be executed by one of its officers, under its direction.

[731]

25 B., 99; 1 B. Ch., 568; 5 Pal., 47, 560; 11 Ab., 472.

§ 72. The three last sections shall extend only to cases of express trusts.

ART. 2.
Application
of three last
sections.

See Laws of 1840, ch. 318; 1841, ch. 261; 1846, ch. 74; 1839, ch. 174, 184; 1849, ch. 373; 1845, ch. 112; 1855, ch. 432, ch. 230; 1852, ch. 203.

ARTICLE THIRD.

OF POWERS.

SEC. 73. Powers as they now exist abolished; future powers to be governed by this Article.

74. Definition of a power.
75. Who capable of granting powers.
76. Powers, general or special, and beneficial or in trust.
- 77 & 78. Definitions of general and special powers.
79. When a general or special power is beneficial.
80. Married women may execute general and beneficial powers.
81. Absolute power of disposition in tenant for life, &c. creates a fee.
82. Like power to any other, creates absolute fee as to creditors.
83. When grantee of such power entitled to absolute fee.
84. Power to devise inheritance to be deemed absolute power in certain cases.
85. Power to dispose of fee in certain cases, absolute power of disposition.
86. Effect of reserving power of revocation.
87. To whom special and beneficial powers may be granted.
88. Power of tenant for life to make leases, not assignable, &c.
89. To whom it may be released.
- 90 & 91. Effect of mortgages by persons having power to make leases.
92. Future beneficial powers not herein enumerated, invalid.
93. Liability of beneficial powers in equity, to creditors.
94. When general powers are in trust.
95. When special powers are in trust.
96. Trust powers imperative, unless expressly made optional.
97. Effect of a right of selection by grantee of power.
- 98 & 99. Powers to distribute among several, how construed.
100. Chancery to execute power on death of trustee having right of selection.
101. Also where person to execute power is not designated.
102. Certain prior sections to apply to power in trust.
103. Creditors, &c. of objects of trust, when to compel execution of powers.
104. Effect of assignments under insolvent acts, upon beneficial powers.
105. Powers that may be reserved by grantors in conveyances.
106. By what instruments powers may be granted.
107. When powers to be recorded.
108. Powers irrevocable unless authority is expressly reserved.
109. In whom powers may be vested; by whom exercised.
110. Married women, when and how to execute powers.
111. Married women not to execute power until of age.
112. Powers to be executed by all surviving grantors thereof.
113. By what instruments powers to be executed.
114. Such instruments to be deemed conveyances.
115. Power to dispose by devise, how executed.
116. Power to dispose by grant, cannot be executed by will.
117. Executions by married women, to be acknowledged.
118. Execution governed by preceding rules, although otherwise directed by grantor.
119. Useless formalities directed, dispensed with.
120. Nominal conditions may be disregarded.
121. In other respects, directions of grantor to be observed.
122. Consent of third persons to execution of power, how evidenced.

TITLE 2.

- §80.123. Dispositions not void on account of being too extensive.
 124. Instruments executing power valid, although power not recited.
 125. Such instruments affected by fraud.
 126. General terms in a will sufficient to execute power to devise.
 127. Estates given to descendants by virtue of certain powers, to be advancements.
 128. How term during which alienation may be suspended, to be computed.
 129. Who capable of taking in execution of power.
 130. Authority of married women, under powers.
 131. Defective executions of powers, corrected.
 132. Relief to purchasers under defective executions.
 133. Powers to sell in mortgages, to pass to assignees thereof.
 134. This Article not to extend to simple powers of attorney, &c.
 135. Definition of the terms "grantor of a power" and "grantee of a power."

[722]

Powers as
they now
exist abol-
ished.
Future
powers.

Definition
of a power.

§ 73. Powers, as they now exist by law, are abolished; and from the time this Chapter shall be in force, the creation, construction and execution of powers, shall be governed by the provisions of this Article.

§ 74. A power is an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power, might himself lawfully perform.

12 N. Y., 404; 5 N. Y., 413; 1 B., 62; 3 Du., 73.

Who may
grant pow-
ers.

§ 75. No person is capable in law of granting a power, who is not at the same time, capable of aliening some interest in the lands to which the power relates.

3 Du., 95.

Division of
powers.

§ 76. Powers, as authorised in this Article, are general or special, and beneficial or in trust.

20 B., 238.

Definition
of general
powers.

§ 77. A power is general, where it authorises the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever.

21 B., 52; 1 B., 62.

Definition
of special
powers.

§ 78. A power is special,

1. Where the persons or class of persons, to whom the disposition of the lands under the power is to be made, are designated:

2. Where the power authorises the alienation, by means of a conveyance, will or charge, of a particular estate or interest less than a fee.

11 N. Y., 402.

Beneficial
powers.

§ 79. A general or special power is beneficial, when no person other than the grantee has, by the terms of its creation, any interest in its execution.

20 B., 238; 22 W., 498.

Powers to
married
women.

§ 80. A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without the concurrence of her husband, of lands conveyed or devised to her in fee.

15 N. Y., 313; 12 N. Y., 423; 7 Pal., 399; 22 W., 499; 1 B. Ch., 13, 240.

§ 81. Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate, for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power should not be executed, or the lands should not be sold for the satisfaction of debts.

ART. 2.
Estate of
tenant for
life, &c.,
when
changed
into a fee.

§ 82. Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon, but absolute, in respect to creditors and purchasers.

Certain
powers cre-
ate a fee,
&c.

§ 83. In all cases, where such power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee.

[733]
Id.

§ 84. Where a general and beneficial power, to devise the inheritance, shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of the three last preceding sections.

Effect of
power to de-
vise inheri-
tance in cer-
tain cases.

§ 85. Every power of disposition shall be deemed absolute, by means of which the grantee is enabled, in his life time, to dispose of the entire fee, for his own benefit.

Power to
dispose of
fee.

7 Pai., 399.

§ 86. Where the grantor in any conveyance shall reserve to himself, for his own benefit, an absolute power of revocation, such grantor shall still be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

Power to
revoke.

§ 87. A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the lands to which the power relates:

Special and
beneficial
powers,
who may
take.

2. To a tenant for life of the lands embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life.

15 N. Y., 307; 18 W., 270.

§ 88. The power of a tenant for life to make leases, is not assignable as a separate interest, but is annexed to his estate, and will pass, (unless specially excepted) by any conveyance of such estate. If specially excepted in any such conveyance, it is extinguished.

Power to
make leases
by tenant
for life.

§ 89. Such power may be released by the tenant to any person entitled to an expectant estate in the lands, and shall thereupon be extinguished.

Release of
such power.

§ 90. A mortgage executed by a tenant for life having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the

Mortgages
by party
having pow-
er to lease,
&c.

TITLE 1.

power; but the power is bound by the mortgage, in the same manner as the lands embraced therein.

Effect thereof.

§ 91. The effects of such a lien by mortgage on the power, are,

1. That the mortgagee is entitled, in equity, to an execution of the power, so far as the satisfaction of his debt may require:

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage, in the same manner as if in terms embraced therein.

Future beneficial powers.

§ 92. No beneficial power, general or special, hereafter to be created, other than such as are already enumerated and defined in this Article, shall be valid.

18 W., 270; 16 W., 324.

[734]

Beneficial powers liable to creditors.

§ 93. Every special and beneficial power is liable, in equity, to the claims of creditors, in the same manner as other interests that cannot be reached by an execution at law, and the execution of the power may be decreed for the benefit of the creditors entitled.

General powers, when in trust.

§ 94. A general power is in trust, when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from the alienation of the lands, according to the power.

5 B., 198, 652; 1 B., 62; 3 Ed., 212; 3 S. S. C., 555.

Special powers, when in trust.

§ 95. A special power is in trust,

1. When the disposition which it authorises, is limited to be made to any person or class of persons, other than the grantee of such power.

2. When any person or class of persons, other than the grantee, is designated as entitled to any benefit from the disposition or charge authorised by the power.

Laws of 1830, ch. 320, § 11; 5 B., 652; 3 Ed., 212; 3 S. S. C., 559; 1 B., 58.

Trust powers imperative.

§ 96. Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled in equity, for the benefit of the parties interested.

12 N. Y., 403; 3 N. Y., 280; 5 B., 198; 8 Pal., 120; 3 Ed., 212; 1 B., 58.

Effect of right of selection.

§ 97. A trust power does not cease to be imperative, where the grantee has the right to select any, and exclude others of the persons designated as the objects of the trust.

Construction of certain powers.

§ 98. Where a disposition under a power is directed to be made to, or among or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated, shall be entitled to an equal proportion.

Id.

§ 99. But when the terms of the power import that the estate or fund is to be distributed between the persons so

designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons, in exclusion of the other.

§ 100. If the trustee of a power, with the right of selection, shall die, leaving the power unexecuted, its execution shall be decreed in equity for the benefit equally of all the persons designated, as objects of the trust.

25 B., 399; 5 Pal., 468; 3 S. S. C., 559; 2 S. S. C., 515.

§ 101. Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be exercised, its execution shall devolve on the court of chancery.

5 N. Y., 139.

§ 102. The provisions contained in the second Article of this Title, from section sixty-six to section seventy-one, both inclusive, in relation to express trusts and trustees, shall apply equally to powers in trust, and the grantees of such powers.

25 B., 100.

§ 103. The execution in whole or in part, of any trust power, may be decreed in equity, for the benefit of the creditors or assignees of any person entitled as one of the objects of the trust, to compel its execution, when the interest of the objects of such trust is assignable.

§ 104. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass to the assignees of the estate and effects of the person in whom such power or interest is vested, under any assignment authorised by the provisions of the fifth Chapter of this Act.

§ 105. The grantor in any conveyance, may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved, shall be subject to the provisions of this Article, in the same manner as if granted to another.

12 N. Y., 404.

§ 106. A power may be granted,

1. By a suitable clause contained in a conveyance of some estate in the lands, to which the power relates:

2. By a devise contained in a last will and testament.

5 N. Y., 413; 2 S. S. C., 580.

§ 107. Every power shall be a lien or charge upon the lands which it embraces, as against creditors and purchasers in good faith and without notice, of or from any person having an estate in such lands, only from the time the instrument containing the power shall be duly recorded. As against all other persons, the power shall be a lien from the time the instrument in which it is contained, shall take effect.

§ 108. Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it, is granted or reserved in the instrument creating the power.

12 N. Y., 404; 1 B., 62; 2 B., 58; 23 B., 498.

ART. 2.

When chancery to execute power.

Application of certain prior sections.

[735] Execution of trust power when compelled by creditors, &c.

Beneficial powers, &c., how affected by insolvent assignments, &c.

Reservation of powers in conveyances.

How powers to be granted.

When powers to be recorded.

When powers irrevocable.

TITLE 1.
Who to execute powers.

§ 109. A power may be vested in any person capable in law of holding, but cannot be exercised by any person not capable, of aliening lands, except in the single case mentioned in the next section.

10 B., 604.

Married women.

§ 110. A married woman may execute a power during her marriage, by grant or devise, as may be authorised by the power, without the concurrence of her husband, unless by the terms of the power its execution by her, during marriage, is expressly or impliedly prohibited.

15 N. Y., 307; 12 N. Y., 423; 27 B., 332; 1 B. Ch., 13, 240; 10 B., 597.

Ib.

§ 111. No power vested in a married woman, during her infancy, can be exercised by her, until she attains her full age.

Execution by survivors, &c.

§ 112. Where a power is vested in several persons, all must unite in its execution; but if previous to such execution, one or more of such persons shall die, the power may be executed by the survivor or survivors.

11 N. Y., 397; 1 N. Y., 358; 1 B. Ch., 569; 2 Pal., 197.

How executed.

[736]

§ 113. No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power, if the person executing the power were the actual owner.

11 N. Y., 398.

Instruments deemed conveyances.

§ 114. Every instrument, except a will, in execution of a power, and although the power may be a power of revocation only, shall be deemed a conveyance within the meaning, and subject to the provisions, of the third Chapter of this Act.

12 N. Y., 404.

Execution of power to dispose by devise.

§ 115. Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed, according to the provisions of the sixth Chapter of this Act.

10 B., 597.

Ib. to dispose by grant.

§ 116. Where a power is confined to a disposition by grant, it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power.

4 N. Y., 11; 4 B., 412; 3 B., 128.

Married women to acknowledge executions.

§ 117. If a married woman execute a power by grant, the concurrence of her husband, as a party, shall not be requisite, but the grant shall not be a valid execution of the power, unless it be acknowledged by her on a private examination, in the manner prescribed in the third Chapter of this Act, in relation to conveyances by married women.

Directions by grantor.

§ 118. Where the grantor of a power shall have directed or authorised it to be executed by an instrument not sufficient in law to pass the estate, the power shall not be void, but its execution shall be governed by the rules before prescribed in this Article.

§ 119. When the grantor shall have directed any formalities to be observed in the execution of the power, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formalities shall not be necessary to a valid execution of the power.

ART. 8.
Directions
by grantor.

§ 120. Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

Nominal
conditions.

§ 121. With the exceptions contained in the preceding sections, the intentions of the grantor of a power, as to the mode, time and conditions of its execution, shall be observed, subject to the power of the court of chancery, to supply a defective execution, in the cases herein after provided.

When di-
rections of
grantor to
be observ-
ed.

2 D., 61.

§ 122. When the consent of a third person to the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or shall be certified in writing thereon. In the first case, the instrument of execution, in the second, the certificate, shall be signed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, in the same manner as if subscribed to a conveyance of lands.

Consent of
third per-
sons to ex-
ecution of
power.

11 N. Y., 401.

§ 123. No disposition, by virtue of a power, shall be void in law or in equity, on the ground that it is more extensive than was authorised by the power; but every estate or interest so created, so far as embraced by the terms of the power, shall be valid.

[737]
Certain dis-
positions,
not void.

§ 124. Every instrument executed by the grantee of a power, conveying an estate or creating a charge, which such grantee would have no right to convey or create, unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein.

Omission
to recite
power.

§ 125. Instruments in execution of a power are affected by fraud, both in law and equity, in the same manner as conveyances by owners or trustees.

Fraud.

§ 126. Lands embraced in a power to devise, shall pass by a will purporting to convey all the real property of the testator, unless the intent that the will shall not operate as an execution of the power, shall appear, expressly or by necessary implication.

Power to
devise, how
executed by
terms of
will.

25 B., 564.

§ 127. Every estate or interest given by a parent to a descendant, by virtue of a beneficial power, or of a power in trust with a right of selection, shall be deemed an advancement to such descendant, within the provisions of the second Chapter of this Act.

Certain es-
tates to be
advances-
ments.

§ 128. The period during which the absolute right of

Computa-
tion of term

**TITLE 2
of suspension.**

alienation may be suspended, by any instrument in execution of a power, shall be computed, not from the date of such instrument, but from the time of the creation of the power.

12 N. Y., 404; 3 Du., 73.

**Who may
take under
powers.**

§ 129. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which such person would not have been capable of taking, under the instrument by which the power was granted.

3 Du., 95; 16 W., 324.

**Married
women,
their au-
thority, &c.**

§ 130. When a married woman, entitled to an estate in fee, shall be authorised by a power, to dispose of such estate during her marriage, she may, by virtue of such power, create any estate, which she might create if unmarried.

**Defective
executions.**

§ 131. Where the execution of a power in trust shall be defective, in whole or in part, under the provisions of this Article, its proper execution may be decreed, in equity, in favor of the persons designated as the objects of the trust.

3 N. Y., 278.

Id.

§ 132. Purchasers for a valuable consideration, claiming under a defective execution of any power, shall be entitled to the same relief in equity, as similar purchasers, claiming under a defective conveyance from an actual owner.

11 N. Y., 400.

**Powers to
sell in
mortgages.**

§ 133. Where a power to sell lands, shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in, and may be executed by any person, who, by assignment or otherwise, shall become entitled to the money so secured to be paid.

[738]

**Application
of this arti-
cle.**

§ 134. The provisions of this Article shall not extend to a simple power of attorney, to convey lands in the name, and for the benefit, of the owner.

**Terms
"grantor of
a power,"
and "grantee
of a
power" de-
fined.**

§ 135. The term "grantor of a power," is used in this Article, as designating the person by whom a power is created, whether by grant or devise; and the term "grantee of a power," is used as designating the person in whom a power is vested, whether by grant, devise or reservation.

11 N. Y., 401.

ARTICLE FOURTH.

OF ALIENATION BY DEED.

SEC. 136. Feoffment with livery of seisin, abolished.

137. Grants in fee or of freeholds, how executed; when to take effect.

138. Delivery essential to grants.

139. Covenants not implied in mortgages; remedy of mortgagee.

140. No covenants to be implied in conveyances.

141. Lineal and collateral warranties abolished; liability of heirs.

142. Deeds of bargain and sale, and of lease and release, deemed grants.

143. No greater estate to pass by a conveyance, than such as grantor had.

SEC. 144. Grants conclusive against certain purchasers.

- 145. Conveyances of greater estate by tenant for life or for years.
- 146. Conveyances of lands occupied, when valid without attornment.
- 147. Grant of lands possessed by claimant under adverse title, void.
- 148. But mortgages of such lands may be given; effect thereof.

§ 136. The mode of conveying lands by feoffment with livery of seisin, is abolished. Livery of seisin.

§ 137. Every grant in fee or of a freehold estate, shall be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent; if not duly acknowledged, previous to its delivery, according to the provisions of the third Chapter of this Act, its execution and delivery shall be attested by at least one witness; or if not so attested, it shall not take effect as against a purchaser or incumbrancer, until so acknowledged. Grants in fee or of freeholds, how executed; when to take effect.

13 N. Y., 514; 31 B., 157; 17 B., 103; 6 B., 42; 2 B., 618; 2 W., 575; 2 S. Ch., 633.

§ 138. A grant shall take effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law now in force in respect to the delivery of deeds, shall apply to grants hereafter to be executed. Delivery.

6 B., 103; 11 W., 240; 5 W., 533.

§ 139. No mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured; and where there shall be no express covenant for such payment, contained in the mortgage, and no bond or other separate instrument to secure such payment, shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage. Covenants in mortgages. Remedies of mortgagee.

2 B. Ch., 569.

§ 140. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. Covenants in conveyances.

13 N. Y., 158; 9 N. Y., 542; 31 B., 551; 13 B., 284; 8 Pal., 598; 14 W., 39; Cl. Ch., 503; 1 Du., 427; 11 Pal., 569; 20 B., 455; 15 B., 359.

§ 141. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement, shall be answerable upon such covenant or agreement, to the extent of the lands descended or devised to them, in the cases and in the manner prescribed by law. [739] Lineal and collateral warranties.

1 R. L., 525, § 26; 17 B., 165.

§ 142. Deeds of bargain and sale, and of lease and release, may continue to be used, and shall be deemed grants; and as such, shall be subject to all the provisions of this Chapter, concerning grants. Certain deeds declared grants

1 N. Y., 248.

§ 143. No greater estate or interest shall be construed to pass by any grant or conveyance, hereafter executed, than

Effects of certain conveyances.

TITLE 1.

the grantor himself possessed at the delivery of the deed, or could then lawfully convey, except that every grant shall be conclusive as against the grantor and his heirs claiming from him by descent.

9 N. Y., 51; 1 N. Y., 248.

How far
conclusive
on purchas-
ers.

§ 144. Every grant shall also be conclusive as against subsequent purchasers from such grantor, or from his heirs claiming as such, except a subsequent purchaser, in good faith and for a valuable consideration, who shall acquire a superior title by conveyance that shall have been first duly recorded.

6 B., 356.

Convey-
ances by
tenants for
life or for
years.

§ 145. A conveyance made by a tenant for life or years of a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the title, estate or interest, which such tenant could lawfully convey.

1 N. Y., 248.

Attornment
by tenant
when un-
necessary.

§ 146. Where any lands or tenements shall be occupied by a tenant, a conveyance thereof, or of the rents or profits, or of any other interest therein, by the landlord of such tenant, shall be valid without any attornment of such tenant to the grantee; but the payment of rent to such grantor, by his tenant, before notice of the grant, shall be binding upon such grantee; and such tenant shall not be liable to such grantee for any breach of the condition of the demise, until he shall have had notice of such grant.

1 R. L., 525, § 25; 4 N. Y., 128.

Conveyance
of land ad-
versely pos-
sessed.

§ 147. Every grant of lands shall be absolutely void, if at the time of the delivery thereof, such lands shall be in the actual possession of a person claiming under a title adverse to that of the grantor.

1 R. L., 173, § 8; 22 N. Y., 172; 26 B., 454; 20 B., 439; 17 B., 665; 15 B., 497; 2 B., 157; 4 H., 469; 2 Cal., 182; 4 Du., 454; 21 W., 98; 19 B., 644; 14 B., 441; 13 B., 147; 3 Du., 35.

Mortgages
may be
given.
Effects
thereof.

§ 148. But every person having a just title to lands, of which there shall be an adverse possession, may execute a mortgage on such lands; and such mortgage, if duly recorded, shall bind the lands from the time the possession thereof shall be recovered, by the mortgagor or his representatives. And every such mortgage shall have preference over any judgment or other instrument, subsequent to the recording thereof; and if there be two or more such mortgages, they shall severally have preference according to the time of recording the same respectively.

5 N. Y., 347.

Priority of
lien.

See Laws of 1845, ch. 112; 1841, ch. 261; 1840, ch. 318; 1839, ch. 174, 184.

TITLE III.

TITLE A
[740]

OF ESTATES IN DOWER.

- SEC. 1. Of what widows shall be endowed.
2. Widows of aliens, if inhabitants, entitled to dower.
 3. Dower in case of exchange of lands.
 4. Dower in lands mortgaged before marriage.
 5. In lands mortgaged for purchase money.
 6. Claim to one-third of surplus proceeds of sale, in such case.
 7. Widow of mortgages not entitled to dower.
 8. Dower forfeited by divorce for misconduct.
 9. Settlements by jointure, to bar dower.
 10. How her assent to jointure to be evidenced.
 11. Provision in lieu of dower, when to bar it.
 12. If jointure, &c., made without her assent, she to elect.
 13. If provision in lieu of dower be made by will, to elect.
 14. Deemed to have elected, unless she enter or sue, within a year.
 15. Jointures, &c., in lieu of dower, forfeited same as dower.
 16. Acts of husband, not to affect right to dower.
 17. Widow entitled to remain in husband's house 40 days.
 18. Widow to demand her dower within 20 years after husband's death.
 19. When entitled to damages, on recovering dower.
 20. Measure of such damages in different cases.
 21. Not to be estimated on certain improvements.
 22. Damages against heir for land aliened by him.
 23. Assignment of dower in satisfaction, to bar further claim.
 24. Infant heirs not to be prejudiced by a collusive recovery.
 25. Widow may bequeath crops growing in her dower land.

§ 1. A widow shall be endowed of the third part of all the lands whereof her husband was seised of an estate of inheritance, at any time during the marriage. Dower of widows.

8 N. Y., 110; 5 N. Y., 394, 502; 4 N. Y., 95; 23 B., 125; 18 B., 561; 15 B., 485; 13 B., 106; 12 B., 201, 537; 11 B., 152; 8 B., 401; 5 B., 324; 3 B., 319; 1 B., 399; 21 W., 60; 16 W., 61-622; 12 W., 66; 11 W., 592; 10 W., 486; 7 Pai., 259; 1 Pai., 634; 2 D., 430; 3 Ed., 437; 6 J. C. R., 258; 4 J. C. R., 604; 13 J. R., 180; 2 J. R., 123; 7 Cow., 357; 5 Cow., 389; 1 Cow., 463; 1 R. L., 56, § 1.

§ 2. The widow of any alien, who, at the time of his death, shall be entitled by law to hold any real estate, if she be an inhabitant of this state, at the time of such death, shall be entitled to dower, of such estate, in the same manner as if such alien had been a native citizen. Widows of aliens.

21 W., 62; 12 W., 66; 5 Cow., 713.

§ 3. If a husband, seised of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but shall make her election, to be endowed of the lands given, or of those taken, in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange. Dower in case of exchange of lands.

12 B., 537; 7 B., 638.

§ 4. Where a person seised of an estate of inheritance in Lands, mortgaged

TITLE 2.
before marriage.

lands, shall have executed a mortgage of such estate, before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

8 B., 618; 1 B., 407; 13 How. P. R., 295.

In lands mortgaged for purchase money.

[741]

§ 5. Where a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

15 J. R., 458; 10 Pai., 49; 6 Cow., 316; 20 N. Y., 412; 12 B., 543.

In such case, extent of claim to surplus proceeds of sale.

§ 6. Where, in such case, the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power of sale contained in the mortgage, or by virtue of the decree of a court of equity, and any surplus shall remain, after payment of the monies due on such mortgage and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus, for her life, as her dower.

8 B., 618.

Widow of mortgagee.

§ 7. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he acquire an absolute estate therein, during the marriage.

When dower forfeited.

§ 8. In case of divorce, dissolving the marriage contract, for the misconduct of the wife, she shall not be endowed.

1 R. L., 53, § 7; and 2 R. L., 196, § 8; 4 B., 192; 24 W., 198; 3 Ab., 150.

When barred by jointure.

§ 9. Whenever an estate in lands shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim of dower of such wife, in any lands of the husband.

1 R. L., 58 & 59, § 8 & 9.

Evidence of her assent.

§ 10. The assent of the wife to such jointure shall be evidenced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

2 Pai., 559.

When dower barred by pecuniary provisions.

§ 11. Any pecuniary provision that shall be made for the benefit of an intended wife and in lieu of dower, shall, if assented to by such intended wife, as above provided, be a bar to any right or claim of dower of such wife in all the lands of her husband.

1 J. R., 307; 5 Pai., 447; 6 J. C. R., 194.

§ 12. If before her coverture, but without her assent, or if after her coverture, lands shall be given or assured for the jointure of a wife, or a pecuniary provision be made for her, in lieu of dower, she shall make her election whether she will take such jointure or pecuniary provision, or whether she will be endowed of the lands of her husband, but she shall not be entitled to both.

5 Pal., 447; 6 J. C. R., 194.

§ 13. If lands be devised to a woman, or a pecuniary or other provision be made for her by will, in lieu of her dower, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her husband.

9 N. Y., 511; 7 Cow., 288; 5 Pal., 447; 5 H., 206; 2 D., 430; 4 B., 20; 13 B., 106.

§ 14. When a woman shall be entitled to an election, under either of the two last sections, she shall be deemed to have elected to take such jointure, devise or pecuniary provision, unless within one year after the death of her husband she shall enter on the lands to be assigned to her for her dower, or commence proceedings for the recovery or assignment thereof.

§ 15. Every jointure, devise and every pecuniary provision in lieu of dower, shall be forfeited by the woman for whose benefit it shall be made, in the same cases in which she would forfeit her dower; and upon such forfeiture, any estate so conveyed for jointure, and every pecuniary provision so made, shall immediately vest in the person or his legal representatives, in whom they would have vested on the determination of her interest therein, by the death of such woman.

§ 16. No act, deed or conveyance, executed or performed by the husband, without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the estates of married women, and no judgment or decree confessed by or recovered against him, and no laches, default, covin or crime of the husband, shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

1 R. L., 57 & 59, § 4 & 10; 2 N. Y., 249; 4 B., 201; 3 Ed., 437; 1 Ed., 349; 7 B., 388.

§ 17. A widow may tarry in the chief house of her husband, forty days after his death, whether her dower be sooner assigned to her or not, without being liable to any rent for the same, and in the mean time she shall have her reasonable sustenance out of the estate of her husband.

1 R. L., 57, § 1; 1 S. S. C., 218; 10 W., 419.

§ 18. A widow shall demand her dower within twenty years after the death of her husband; but if, at the time of such death, she be under the age of twenty-one years, or insane, or imprisoned on a criminal charge or conviction, the time during

TITLE 3.
When to elect between jointure, &c., and dower.

When between devise, &c., and dower.

[742]
When deemed to have elected.

When jointure, &c., forfeited.

Right to dower, &c. not affected by acts of husband, nor by judgments, &c., against him.

May remain in husband's house 40 days.

Dower to be demanded within 20 years, &c.

TITLE 2.

which such disability continues, shall not form any part of the said term of twenty years.

1 R. L., 57, § 1; 32 B., 429; 2 S. Ch., 569; 6 J. C. R., 194; 8 W., 661; 12 W., 139; 1 B., 500.

When to recover damages.

§ 19. Whenever in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seised, she shall be entitled also to recover damages for the withholding of such dower.

1 R. L., 57, § 2.

Measure of damages;

against heir;

against others.

§ 20. Such damages shall be one-third part of the annual value of the mesne profits of the lands, in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband, from the time of his death; and in suits against other persons, from the time of her demanding her dower of such persons; and in all cases to be estimated to the time of recovering judgment for such damages, but not to exceed six years in the whole, in any case.

(743)
Not on improvements

§ 21. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

1 R. L., 60, § 1.

Damages against heirs aliening land;

to be deducted, &c.

§ 22. Where a widow shall recover her dower in any lands aliened by the heir of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of such alienation by the heir, not exceeding six years in the whole; and the amount recovered from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and also any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

2 N. Y., 249.

Claim when barred by an assignment of dower.

§ 23. Where the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it may be pleaded in bar of any further claim of dower, by the heir of such husband, or any grantee of such heir, or any grantee of such husband.

Collusive recovery not to prejudice infant heirs.

§ 24. Where a widow not having right to dower, shall, during the infancy of the heirs of the husband, or any of them, in any suit, commenced either by the widow or by the guardian of any heir, or upon any application to the supreme court, court of common pleas, or surrogate, recover by the default or collusion of such guardian, such infant heir shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

1 R. L., 57, § 5 & 6.

§ 25. A widow may bequeath the crop in the ground of the land holden by her in dower.

1 R. L., 368, § 17.

TITLE 4
May be-
queath
crops.

TITLE IV.

ON ESTATES FOR YEARS, AND AT WILL; AND THE RIGHTS AND DUTIES OF LANDLORDS AND TENANTS.

- SEC. 1. Construction of certain agreements for use of lands.
 2. Effect of new lease, after surrender of former.
 3. Attornments by tenants void.
 4, 5 & 6. Remedy in equity against land held under contract for purchase.
 7. Tenancy at will or by sufferance, may be terminated by notice.
 8. How notice to be served.
 9. Rights of landlord on expiration of notice.
 10. Penalty on tenant for not yielding possession.
 11. Penalty on tenants, &c. for holding over after notice to quit.
 12 to 17. Repealed.
 18. Rights to distrain for rents or services, declared.
 19. Remedy by action for rent on leases for life.
 20. Rents dependent on life of another, how recovered.
 21. Remedy of executors, for arrears of rent.
 22. Rights of executors, of tenant for life having rent due.
 23. Rights of grantors, assignees, &c. of lessor of demised lands.
 24. Rights of lessors and their assignees, &c.
 25. Two last sections to extend to leases in fee, for life or for years.
 26. When landlord may recover for use and occupation.
 27. Penalty on tenant for not delivering process, served on him.

[744]

§ 1. Agreements for the occupation of lands or tenements, in the city of New-York, which shall not particularly specify the duration of such occupation, shall be deemed valid until the first day of May next after the possession under such agreement shall commence, and the rent under such agreement shall be payable at the usual quarter days for the payment of rent in the said city, unless otherwise expressed in the agreement.

Duration of
certain
agreements.
in New
York.

Laws of 1820, 178, § 4; 21 W., 338; 5 Du., 559; 4 E. D. S., 176; 2 E. D. S., 105; 8 How. P. R., 141.

§ 2. If any lease be surrendered in order to be renewed, and a new lease be made by the chief landlord, such new lease shall be good and valid to all intents and purposes, without a surrender of all or any of the under leases derived out of such original lease so surrendered; and the chief landlord, his lessee, and the holders of such under leases, shall enjoy all their rights and interests, in the same manner and to the same extent, as if the original lease had been still continued; and the chief landlord shall have the same remedy by distress, or entry upon the demised premises for the rents and duties secured by such new lease, so far as the same do not exceed the rents and duties reserved in the original lease so surrendered.

Effect of
new lease
after sur-
render of
former lease

1 R. L., 442, § 26 & 28; 14 N. Y., 22.

§ 3. The attornment of a tenant to a stranger shall be

Attorn-

TITLE 4
ments by
tenants.

absolutely void, and shall not in any wise affect the possession of his landlord, unless it be made,

1. With the consent of the landlord: or,
2. Pursuant to, or in consequence of, a judgment at law, or the order or decree of a court of equity; or,
3. To a mortgagee after the mortgage has become forfeited.

5 N. Y., 404; 25 B., 249; 19 How. P. R., 293.

Remedy in
equity
against land
held under
contract for
purchase.

§ 4. The interest of any person holding a contract for the purchase of lands, shall not be bound by the docketing of any judgment or decree, nor be sold by execution upon any such judgment or decree; but whenever an execution against the property of such person shall have been issued, on a judgment or decree, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution, may file a bill in chancery against such defendant and the party bound to perform such contract, to prevent the transfer of such contract, and to obtain satisfaction of the sum remaining due on such judgment or decree, out of the interest of the defendant in the said contract.

a.

9 N. Y., 51; 17 B., 139, 396; 12 B., 653; 11 B., 499; 6 B., 127; 2 B. Ch., 463; 9 Pal., 76, 423; 3 Pal., 220; Cl. Ch., 279; 6 H., 525.

[745]
Interest of
defendant
may be sold
&c.
Specific per-
formance.

§ 5. The interest of the defendant in such contract, may be sold under the decree of the court, or transferred to the complainant, in such manner and upon such terms as the court shall deem most conducive to the interests of the parties; and the court shall have power in such suit, to decree a specific performance of such contract, either in favor of the complainant, or in favor of the purchaser, if the interest in the contract shall be directed to be sold.

6 B., 127.

Interest of
defendant
how applied

§ 6. The value of the interest of the defendant holding such contract, shall be ascertained by the court, and the same, or so much thereof as may be necessary for that purpose, shall be applied to the payment of the judgment or decree of the complainant, and the residue applied to the benefit of the defendant.

12 B., 653; 6 B., 127.

Tenancy at
will, &c.,
terminated
by notice.

§ 7. Wherever there is a tenancy at will, or by sufferance created, by the tenant's holding over his term, or otherwise, the same may be terminated by the landlord's giving one month's notice in writing to the tenant, requiring him to remove therefrom.

Laws of 1820, 177, Proviso to § 1; 14 N. Y., 64; 14 B., 255; 12 B., 484; 3 B., 579; 7 Cow., 747; 4 D., 187; 19 How. P. R., 31; 11 W., 616; 5 Du., 559.

How served

§ 8. Such notice shall be served by delivering the same to such tenant, or to some person of proper age residing on the premises; or if the tenant can not be found, and there be no such person residing on the premises, such notice may be

served by affixing the same on a conspicuous part of the premises, where it may be conveniently read.

11 W., 620; 4 D., 187.

§ 9. At the expiration of one month from the service of such notice, the landlord may re-enter, or maintain ejectment, or proceed in the manner prescribed by law, to remove such tenant, without any further or other notice to quit.

14 B., 253; 12 B., 484; 4 D., 187.

Rights of landlord.

§ 10. If any tenant shall give notice of his intention to quit the premises by him holden, and shall not accordingly deliver up the possession thereof, at the time in such notice specified, such tenant, his executors or administrators, shall, from thenceforward, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be levied, sued for and recovered, at the same time and in the same manner, as the single rent; and such double rent shall be continued to be paid during all the time such tenant shall continue in possession as aforesaid.

1 R. L., 440, § 22.

Penalty on tenant for not yielding possession after giving notice.

§ 11. If any tenant, for life or years, or if any other person who may have come into the possession of any lands or tenements, under or by collusion with such tenant, shall wilfully hold over any lands or tenements after the termination of such term, and after demand made and one month's notice, in writing, given in the manner herein before prescribed, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the lands or tenements so detained, for so long a time as he shall so hold over or keep the person entitled, out of possession; and shall also pay and remunerate all special damages whatever, to which the person so kept out of possession may be subjected by reason of such holding over; and there shall be no relief in equity against any recovery had at law under this section.

1 R. L., 440, § 21, and Laws of 1820, 179, § 8.
Sects. 12 to 17 repealed by Laws of 1846, ch. 274.

Penalty on tenants, &c., for holding over after notice to quit.

[746]

No relief in equity.

§ 18. When any certain services or certain rent reserved out of any lands or tenements, shall not be paid or rendered when due, the person entitled thereto, may distrain for the same.*

* Distress for rent abolished by Laws of 1846, ch. 274, § 1.

2 N. Y., 152; 2 H., 649; 8 Pal., 217.

[747]
Right to distrain.

§ 19. Any person having any rent due upon any lease for life or lives, may have the same remedy to recover such arrears, by action of debt, as if such lease were for years.

Remedy on leases for life.

§ 20. Every person entitled to any rents dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action or by distress,

Rents dependent on life of another.

TITLE 4.

for the recovery of all arrears of such rent, that shall be behind and unpaid at the death of such other person, as he might have had if such person was in full life.

1 R. L., 438, § 16, 18, 19, 20 & 27.

Remedy of
executors,
&c., for ar-
rears of
rent.

§ 21. The executors or administrators of every person to whom any rent shall have been due and unpaid at the time of his death, may have the same remedy by action or by distress, for the recovery of all such arrears, that their testator or intestate might have had, if living.

20 B., 274; 5 Cow., 502.

Executors,
&c., of ten-
ant for life.

§ 22. When a tenant for life, who shall have demised any lands, shall die on or after the day when any rent became due and payable, his executors or administrators may recover from the under tenant, the whole rent due; if he die before the day when any rent is to become due, they may recover the proportion of rent which accrued before his death.

Rights of
grantees,
assignees,
&c., of less-
or of dem-
ised land.

§ 23. The grantees of any demised lands, tenements, rents or other hereditaments, or of the reversion thereof, the assignees of the lessor of any demise, and the heirs and personal representatives of the lessor, grantee or assignee, shall have the same remedies by entry, action, distress or otherwise, for the non-performance of any agreement contained in the lease so assigned, or for the recovery of any rent, or for the doing of any waste or other cause of forfeiture, as their grantor or lessor had, or might have had, if such reversion had remained in such lessor or grantor.

1 R. L., 363; 19 N. Y., 82; 12 N. Y., 296; 14 N. Y., 22; 6 N. Y., 491; 32 B., 458; 27 B., 173; 12 B., 462; 2 H., 276, 475; 5 D., 127; 13 W., 609; 2 Hilt., 6.

Rights of
lessees and
their as-
signees, &c.

§ 24. The lessees of any lands, their assigns or personal representatives, shall have the same remedy by action or otherwise against the lessor, his grantees, assignees, or his or their representatives, for the breach of any covenant or agreement in such lease contained, as such lessee might have had against his immediate lessor, except covenants against incumbrances, or relating to the title or possession of the premises demised.

12 N. Y., 301; 27 B., 173; 12 B., 462; 4 S. & C., 516.

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Application
of two last
sections.

§ 25. The provisions of the two last sections shall extend as well to grants or leases in fee, reserving rents, as to leases for life and for years.

19 N. Y., 100; 32 B., 458; 27 B., 173; 12 B., 462.

When land-
lord may
recover for
use and oc-
cupation.

§ 26. Any landlord may recover in an action on the case, a reasonable satisfaction for the use and occupation of any lands or tenements, by any person under any agreement not made by deed; and if any parol demise or other agreement, not being by deed, by which a certain rent is reserved, shall appear in evidence on the trial of any such action, the plaintiff shall not on that account be debarred from a recovery,

but may make use thereof as evidence of the amount of the damages to be recovered.

1 R. L., 444, § 31; 15 N. Y., 328; 25 B., 249; 7 B., 194; 7 H., 88;
1 Hilt., 55, 155; 6 J. R., 46, 1 D., 37; 1 W., 134; 7 W., 109; 13 J.
R., 240, 297, 489.

§ 27. Every tenant to whom a declaration in ejectment, or any other process, proceeding or notice of any proceeding, to recover the land occupied by him, or the possession thereof, shall be served, shall forthwith give notice thereof to his landlord, under the penalty of forfeiting the value of three years rent of the premises so occupied by him, which may be sued for and recovered by the landlord or person of whom such tenant holds.

Penalty on tenant for not delivering, &c., notice served on him.

1 R. L., 443, § 29.

See Laws of 1846, ch. 274; 1855, ch. 17.

TITLE V.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

- SEC. 1. Words of inheritance not necessary to convey a fee, &c.
2. Intent of parties to conveyances, to be carried into effect.
3. Purchasers from heirs, not affected by will unless it be recorded, &c.
4. Heirs and devisees to extinguish mortgages on lands coming to them.
5. Mortgages for purchase money to be preferred to previous judgments.
6. When persons on whose lives estates depend, to be deemed dead.
7. Liability of guardians, &c., holding over after their estates have ceased.
8. Remedies of Reversioners and Remainder men, for injuries to estates.
9. Remedies of joint tenants and tenants in common against each other.
10. Definition of terms "real estate" and "lands."
11. Vested rights, and construction of instruments, not to be affected.

§ 1. The term "heirs," or other words of inheritance, shall not be requisite to create or convey an estate in fee; and every grant or devise of real estate, or any interest therein, hereafter to be executed, shall pass all the estate or interest of the grantor or testator, unless the intent to pass a less estate or interest shall appear, by express terms, or be necessarily implied in the terms of such grant.

Certain words not necessary to pass a fee.

All the estate of grantor to pass, unless, &c.

12 N. Y., 128; 7 N. Y., 163; 5 N. Y., 452; 4 N. Y., 56; 28 B., 364;
23 B., 498; 19 B., 494; 15 B., 141; 12 B., 460; 16 How. P. R., 99.

§ 2. In the construction of every instrument creating or conveying, or authorizing the creation or conveyance of, any estate or interest in lands, it shall be the duty of courts of justice, to carry into effect the intent of the parties, so far as such intent can be collected from the whole instrument, and is consistent with the rules of law.

Duty of courts in construing conveyances.

8 N. Y., 539; 32 B., 45; 13 B., 127; 5 B., 103; 2 B., 368; 22 W., 489;
9 Pal., 116; 1 S. Ch., 275; 3 S. S. C., 110; 3 Du., 554; 20 How. P.
R., 321; 11 Ab., 37.

§ 3. The title of a purchaser in good faith and for a valuable consideration, from the heirs at law of any person who shall have died seised of real estate, shall not be defeated or impaired, by virtue of any devise made by such person, of the real estate so purchased, unless the will or codicil contain-

Wills of real estate to be proved and [749] recorded within four years, except when

TITLE 5.
devisee un-
der dis-
ability, or
will has
been con-
cealed.

ing such devise, shall have been duly proved as a will of real estate, and recorded in the office of the surrogate having jurisdiction, or of the register of the court of chancery where the jurisdiction shall belong to that court, within four years after the death of the testator: except,

1. Where the devisee shall have been within the age of twenty-one years, or insane, or imprisoned, or a married woman, or out of the state, at the time of the death of such testator: or,

2. Where it shall appear, that the will or codicil containing such devise, shall have been concealed by the heirs of such testator, or some one of them:

In which several cases, the limitation contained in this section shall not commence, until after the expiration of one year from the time when such disability shall have been removed, or such will or codicil shall have been delivered to the devisee or his representative, or to the proper surrogate.

Laws of 1830, ch. 320, § 12.

Mortgages
on lands in-
herited or
devised, by
whom to be
paid.

§ 4. Whenever any real estate, subject to a mortgage executed by any ancestor or testator, shall descend to an heir, or pass to a devisee, such heir or devisee shall satisfy and discharge such mortgage, out of his own property, without resorting to the executor or administrator of his ancestor, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

28 B., 429; 27 B., 45, 620; 10 Pai., 163; 3 Pai., 404; 9 Pai., 454; 11 Pai., 269.

Preference
to mort-
gages for
purchase
money.

§ 5. Whenever lands are sold and conveyed, and a mortgage is given by the purchaser at the same time, to secure the payment of the purchase money, or any part thereof, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser.

1 R. L., 375, § 15; 23 B., 125; 3 S. S. C., 118.

**Presump-
tion of
death in
certain
cases.**

§ 6. If any person, upon whose life any estate in lands or tenements shall depend, shall remain beyond sea, or shall absent himself, in this state or elsewhere, for seven years together, such person shall be accounted naturally dead, in any action concerning such lands or tenements, in which his death shall come in question, unless sufficient proof be made in such case, of the life of such person.

1 R. L., 103, § 1; 13 How. P. R., 120; 3 Ab., 224; 1 B. Ch., 462.

**Liability of
guardians,
&c., holding
over after
their estates
have ceased.**

§ 7. Every person, who, as guardian or trustee for an infant, and every husband seised in right of his wife only, and every other person having an estate determinable upon any life or lives, who, after the determination of such particular estate, without the express consent of the party immediately entitled after such determination, shall hold over and continue in possession of any lands, tenements or hereditaments, shall be adjudged to be a trespasser; and every person and his executors and administrators, who shall be entitled to such lands,

tenements or hereditaments, upon the determination of such particular estates, may recover in damages against every such person so holding over, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession.

1 R. L., 167, § 7; 14 N. Y., 64, 430.

§ 8. A person seised of an estate in remainder or reversion, may maintain an action of waste or trespass, for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Remedies
of rever-
sioners, &c.

1 R. L., 527, § 33; 29 B., 15; 13 J. R., 268; 11 J. R., 429.

§ 9. One joint tenant or tenant in common, and his executors or administrators, may maintain an action of account, or for money had and received, against his co-tenant for receiving more than his just proportion; and the like action may be maintained by them against the executors or administrators of such co-tenant.

Remedies
of joint-tenants, &c.

1 R. L., 90, § 2; 20 B., 447; 18 B., 265; 1 B., 506; 5 Cow., 188.

§ 10. The terms "real estate," and "lands," as used in this Chapter, shall be construed as co-extensive in meaning with lands, tenements and hereditaments.

"Real estate" and "lands" defined.

2 N. Y., 376.

§ 11. None of the provisions of this Chapter, except those converting formal trusts into legal estates, shall be construed as altering or impairing any vested estate, interest or right; or as altering or affecting the construction of any deed, will or other instrument, which shall have taken effect at any time before this Chapter shall be in force as a law.

Vested rights, and construction of instruments, not to be affected.

32 B., 429; 8 Pai., 304.

CHAP. II.

Of Title to Real Property by Descent.

(Took effect January 1, 1890.)

- SEC. 1. General rule as to the order in which real estate shall descend.
2. Rule as to lineal descendants in equal degrees of consanguinity.
 3. Rule when any children are living and any have died leaving descendants.
 4. Rule to apply to all descendants of unequal degrees.
 5. In what cases inheritance to go to father.
 6. When inheritance to go to mother.
 7. When collateral relatives to inherit; rule if there are several of equal degrees.
 8. Brothers and sisters and their descendants, to inherit.
 9. Rule to apply to all other direct lineal descendants of unequal degrees.
 10. Brothers and sisters of father, and their descendants, when to inherit.
 11. When brothers and sisters of mother, and their descendants, to inherit.
 12. In what case brothers and sisters of mother, and their descendants, to be preferred.
 13. When brothers and sisters of father and mother, to inherit equally.
 14. When mother of illegitimate intestate, and her descendants, to inherit.
 15. Rule as to relatives of the half blood.

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- SEC. 16. In cases not provided for, rules of common law to prevail.
 17. Rule when but one heir; when several, to hold as tenants in common.
 18. Posthumous descendants and relatives, to inherit as if born in life of intestate.
 19. Illegitimate children and relatives, not to inherit.
 20. This Chapter not to affect curtesy, or dower, or limitations.
 21. Descent of estates in trust.
 22. Alienism of ancestor not to preclude inheritance.
 23. Advancement, if equal to share of an heir, to be set off against it.
 24. If not equal, to be deducted, so that all the shares may be equal.
 25. Value of advancement, how ascertained.
 26. Certain expenses and gifts, not to be deemed advancements.
 27. Definition of terms "real estate" and "inheritance."
 28 & 29. Construction of certain expressions used in this Chapter.

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General rule as to the order in which real estate shall descend.

§ 1. After this Chapter shall take effect, the real estate of every person, who shall die without devising the same, shall descend in manner following:

1. To his lineal descendants:
2. To his father:
3. To his mother: and
4. To his collateral relatives:

Subject in all cases to the rules and regulations herein after prescribed.

2 Denio, 9.

Lineal descendants being in equal degrees.

§ 2. If the intestate shall leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate, the common degree of consanguinity may be.

1 R. L., 52, § 3, first rule.

Children living, and descendants of dead children.

§ 3. If any of the children of such intestate be living, and any be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as shall have died; so that each child who shall be living, shall inherit such share as would have descended to him, if all the children of the intestate who shall have died leaving issue, had been living; and so that the descendants of each child who shall be dead, shall inherit the share, which their parent would have received if living.

1 R. L., 52, § 3, second rule; 3 Ed., 361.

Rule in last section to apply to all descendants of unequal degrees.

§ 4. The rule of descent prescribed in the last section, shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, shall be of unequal degrees of consanguinity to the intestate; so that those who are in the nearest degree of consanguinity, shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity, who shall have died leaving issue, been living; and so that the issue of the descendants who shall have died, shall respectively take the shares, which their parents, if living, would have received.

When father to inherit.

§ 5. In case the intestate shall die without lawful descendants, and leaving a father, then the inheritance shall go to

such father, unless the inheritance came to the intestate, on the part of his mother, and such mother be living: but if such mother be dead, the inheritance descending on her part shall go to the father for life and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided. If there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

1 R. L., 52, § 3, third rule; Laws of 1830, ch. 320, § 13.

§ 6. If the intestate shall die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother, and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance herein after provided. If the intestate in such case, shall leave no brother or sister, nor any descendants of any brother or sister, the inheritance shall descend to the mother in fee.

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When mother to inherit for her life.

When to inherit in fee.

§ 7. If there be no father or mother, capable of inheriting the estate, it shall descend, in the cases herein after specified, to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate, the common degree of consanguinity may be.

Collateral relatives.

Rule when all of different degrees.

1 R. L., 52, § 3, fourth and fifth rules; 31 B., 658; 23 B., 301.

§ 8. If all the brothers and sisters of the intestate be living, the inheritance shall descend to such brothers and sisters; if any of them be living, and any be dead, then to the brothers and sisters, and every of them who are living, and to the descendants of such brothers and sisters as shall have died; so that each brother or sister who shall be living, shall inherit such share as would have descended to him or her, if all the brothers and sisters of the intestate, who shall have died leaving issue, had been living; and so that such descendants shall inherit the share, which their parent would have received, if living.

Brothers and sisters.

Their descendants.

31 B., 658; 21 W., 130; 10 Pal., 148; 5 S. S. C., 418.

§ 9. The same law of inheritance, prescribed in the last section, shall prevail, as to the other direct lineal descendants of every brother and sister of the intestate, to the remotest degree, whenever such descendants are of unequal degrees.

Rule if such descendants are of unequal degrees.

10 Pal., 148; 4 Pal., 340.

§ 10. If there be no heir entitled to take under either of the preceding sections, the inheritance, if the same shall have come to the intestate on the part of his father, shall descend,

Brothers and sisters of father, and their descendants.

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living:

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2. If any be living, and any shall have died leaving issue, then to such brothers and sisters as shall be living, and to the descendants of such of the said brothers and sisters as shall have died:

3. If all such brothers and sisters shall have died, then to their descendants:

In all cases, the inheritance shall descend in the same manner, as if all such brothers and sisters, had been the brothers and sisters of the intestate.

14 N. Y., 235; 10 Pai., 148; 4 Pai., 340.

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Brothers
and sisters
of mother
and their
descendants.

§ 11. If there be no brothers and sisters, or any of them, of the father of the intestate, and no descendants of such brothers and sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as shall have died, or if all shall have died, then to their descendants, in the same manner, as if all such brothers and sisters had been the brothers and sisters of the father.

In what
case brothers
and sisters of
mother, and
their descendants,
to be preferred
to those of
father.

§ 12. In all cases not provided for by the preceding sections, where the inheritance shall have come to the intestate on the part of his mother, the same, instead of descending to the brothers and sisters of the intestate's father, and their descendants, as prescribed in the preceding tenth section, shall descend to the brothers and sisters of the intestate's mother, and to their descendants, as directed in the last preceding section; and if there be no such brothers and sisters, or descendants of them, then such inheritance shall descend to the brothers and sisters and their descendants, of the intestate's father, as before prescribed.

1 R. L., 52, § 3, 3d rule.

When brothers
and sisters of
both father
and mother,
&c., to inherit
equally.

§ 13. In cases where the inheritance has not come to the intestate, on the part of either the father or mother, the inheritance shall descend to the brothers and sisters both of the father and mother of the intestate, in equal shares, and to their descendants, in the same manner as if all such brothers and sisters, had been the brothers and sisters of the intestate.

Mother,
&c., of illegitimate
intestate.

§ 14. In case of the death, without descendants, of an intestate who shall have been illegitimate, the inheritance shall descend to his mother; if she be dead, it shall descend to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate.

23 B., 32.

Relatives of
the half
blood.

§ 15. Relatives of the half blood shall inherit equally with those of the whole blood in the same degree; and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood; unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors; in which case, all those who are not of the blood of such ancestor, shall be excluded from such inheritance.

14 N. Y., 235; 31 B., 658; 1 Pai., 562; 5 S. S. C., 418.

§ 16. In all cases not provided for by the preceding rules, the inheritance shall descend according to the course of the common law.

1 R. L., 52, § 3, 5th rule.

§ 17. Whenever there shall be but one person entitled to inherit, according to the provisions of this Chapter, he shall take and hold the inheritance solely; and whenever an inheritance, or a share of an inheritance, shall descend to several persons, under the provisions of this Chapter, they shall take as tenants in common, in proportion to their respective rights.

6 H., 637.

§ 18. Descendants and relatives of the intestate, begotten before his death, but born thereafter, shall in all cases inherit in the same manner, as if they had been born in the lifetime of the intestate, and had survived him.

1 R. L., 54, § 5; 2 B., 251.

§ 19. Children and relatives who are illegitimate, shall not be entitled to inherit, under any of the provisions of this Chapter.

§ 20. The estate of a husband as tenant by the curtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of this Chapter; nor shall the same affect any limitation of any estate by deed or will.

1 R. L., 54, § 4; 28 B., 344; 15 How. P. R., 595.

§ 21. Real estate held in trust for any other person, if not devised by the person for whose use it is held, shall descend to his heirs, according to the provisions of this Chapter.

1 R. L., 74, § 4.

§ 22. No person capable of inheriting under the provisions of this Chapter, shall be precluded from such inheritance, by reason of the alienism of any ancestor of such person.

13 N. Y., 635; 5 N. Y., 274; 3 B. Ch., 446; 21 W., 130; 3 S. S. C., 81; 7 W., 336.

§ 23. If any child of an intestate shall have been advanced by him, by settlement or portion of real or personal estate, or of both of them, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal estate of such intestate, descendible to his heirs, and to be distributed to his next of kin, according to law; and if such advancement be equal or superior, to the amount of the share, which such child would be entitled to receive, of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share, in the real and personal estate of the intestate.

1 R. L., 313, § 16; 3 S. Ch., 127; 4 Ab., 3; 13 B., 252.

§ 24. But if such advancement be not equal to such share, such child and his descendants shall be entitled to receive so much only, of the personal estate, and to inherit so much only, of the real estate of the intestate, as shall be sufficient

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to make all the shares of the children, in such real and personal estate and advancement, to be equal as near as can be estimated.

3 S. Ch., 127.

Value of advancement.

§ 25. The value of any real or personal estate so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise such value shall be estimated, according to the worth of the property when given.

3 S. Ch., 127.

Expenses, &c., not advancements.

§ 26. The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement.

10 B., 72.

Terms "real estate" and "inheritances" defined.

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§ 27. The term "real estate," as used in this Chapter, shall be construed to include every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seised or possessed thereof, or in any manner entitled thereto, and except leases for years, and estates for the life of another person; and the term "inheritance," as used in this Chapter, shall be understood to mean real estate, as herein defined, descended according to the provisions of this Chapter.

Construction of certain expressions.

§ 28. Whenever, in the preceding sections, any person is described as living, it shall be understood that he was living at the time of the death of the intestate, from whom the descent came; and whenever any person is described as having died, it shall be understood, that he died before such intestate.

Meaning of certain other expressions.

§ 29. The expressions used in this Chapter, "where the estate shall have come to the intestate, on the part of the father," or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate, by devise, gift, or descent from the parent referred to, or from any relative of the blood of such parent.

CHAP. III.

Of the Proof and Recording of Conveyances of Real Estate, and the Cancelling of Mortgages.

(Took effect January 1, 1830.)

- SEC. 1. Conveyances where to be recorded; consequence of omission.
2. Deeds and mortgages to be recorded in different books.
3. Defeasances, of deeds to be recorded with them.
4. Officers authorised to take proof, &c. of deeds.
5. Ambassadors, consuls, in Europe, may take proofs.
6. In Great Britain, &c. consuls, &c. may take proof.
7. Proofs, how certified; effect thereof.
8. Proofs, &c. before special commissioners appointed by chancery.

SEC. 9. Identity to be known or proved.

10. Married woman in this state, to be examined, &c.
11. Proof of conveyances by married woman out of this state.
12. Proof of deeds by subscribing witness.
13. When and how witnesses to deeds, compelled to testify concerning them.
14. Penalty and proceedings on refusal, to appear or to testify.
15. Certificate of proof, to be endorsed on deed.
16. Conveyances so proved and certified, evidence and entitled to be recorded.
17. Record and transcript, evidence; proof may be contested.
18. Certificates when and how to be authenticated.
19. Last section not to apply to deeds of agents of certain estates.
20. Certificates to be recorded with conveyance.
21. Conveyances by treasurer of Connecticut, how verified.
22. This Chapter not to affect conveyances heretofore proved.
23. Conveyances heretofore executed, but not proved, how to be proved.
24. Conveyances to be recorded in order of delivery.
25. Entry of time of recording, to be made, and endorsed.
26. Transcripts of records how to be verified.
27. Conveyances of lands out of this state, how proved.
28. Upon what proof mortgages, to be discharged.
29. Certificate of discharge and proof, &c. to be recorded.
30. When witnesses to conveyance dead, before whom it may be proved.
31. What proof to be made; matters to be stated in certificate.
32. Deed so proved, on being deposited, may be recorded.
33. Effect of recording and deposit, as evidence.
34. Punishment for recording deeds, without being proved.
35. Punishment for malfeasance in executing powers herein given.
36. Definition of term "real estate," as used in this Chapter.
37. Construction of the term "purchaser."
38. Meaning of term "conveyance."
39. Last section not to extend to powers of attorney.
40. Letter of attorney recorded not affected by revocation until recorded.
41. Recording assignment of mortgage not to be notice.
42. This Chapter not to extend to leases for life or years.
43. What provisions of this Chapter apply to register in New-York.

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§ 1. Every conveyance of real estate, within this state, hereafter made, shall be recorded in the office of the clerk of the county where such real estate shall be situated; and every such conveyance not so recorded, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

Conveyances to be recorded in county clerk's office.
[Wills to be recorded, see ch. 1, title 5, § 8.]

1 R. L., 369, 372; Laws of 1819, 269; of 1821, 127; of 1822, 261, 284; of 1823, 412; 13 N. Y., 520; 8 N. Y., 27, 450; 29 B., 507; 25 B., 399; 22 B., 65; 20 B., 392; 18 B., 202; 16 B., 264; 6 B., 67, 349, 346; 15 W., 588; 8 W., 620; 6 W., 213; 3 W., 180; 2 B. Ch., 158; 6 H., 473; 2 H., 650; 8 Pal., 547; 4 Pal., 215; 3 Pal., 437; 1 S. Ch., 425; 1 Ed., 653; 2 J. C. R., 604; 2 J. R., 509.

§ 2. Different sets of books shall be provided, by the clerks of the several counties, for the recording of deeds and mortgages; in one of which sets, all conveyances absolute in their terms, and not intended as mortgages, or as securities, in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded.

Different books for deeds and mortgages.

CHAP. 3.
Certain
deeds to be
deemed
mortgages.

Defeasances
&c., to be
recorded.

§ 3. Every deed conveying real estate, which, by any other instrument in writing, shall appear to have been intended, only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit, such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time.

1 R. L., 372, § 3; Laws of 1822, 262, § 3; 16 B., 439; 5 B., 652; 3 W., 208; 2 Cow., 324; 5 Pai., 111; 1 Pai., 553; Cl. Ch., 167; 6 J. C. R., 417.

Officers
who may
take proofs,
&c., of
deeds.

§ 4. To entitle any conveyance hereafter made, to be recorded by any county clerk, it shall be acknowledged by the party or parties executing the same, or shall be proved by a subscribing witness thereto, before any one of the following officers:

In this state

1. If acknowledged or proved within this state; the chancellor, justices of the supreme court, circuit judges, supreme court commissioners, judges of county courts, mayors and recorders of cities, or commissioners of deeds; but no county judge, or commissioner of deeds for a county or city, shall take any such proof or acknowledgment, out of the city or county, for which he was appointed:

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In any
other part
of United
States.

2. If acknowledged or proved out of this state, and within the United States; the chief justice and associate justices of the supreme court of the United States, district judges of the United States, the judges or justices of the supreme, superior or circuit court, of any state or territory, within the United States, and the chief judge, or any associate judge, of the circuit court of the United States, in the district of Columbia; but no proof or acknowledgment, taken by any such officer, shall entitle a conveyance to be recorded, unless taken within some place or territory, to which the jurisdiction of the court to which he belongs, shall extend.

1 R. L., 369, § 1; by Laws of 1848, ch. 195, as amended by Laws of 1856, ch. 61, provision is made for acknowledgments out of this state; see also Laws of 1858, ch. 259; by Laws of 1840, ch. 238; 1829, ch. 222; 1845, ch. 109, the power is conferred on justices of the peace in this state, any mayor in the U. S., any U. S. consul abroad and the judges in Canada; 6 N. Y., 422; 5 N. Y., 36; 8 B., 562; 5 H., 574; 6 Pai., 60; 11 J. R., 435; 4 J. R., 162.

Ambassa-
dors, con-
suls, &c., in
Europe, &c.

§ 5. If the party or parties executing such conveyance, shall be, or reside, in any state or kingdom in Europe, or in North, or South America, the same may be acknowledged or proved before any minister plenipotentiary, or any minister extraordinary, or any *charge des affaires*, of the United States, resident and accredited within such state or kingdom. If such parties be or reside in France, such conveyance may be acknowledged or proved before the consul of the United States, appointed to reside at Paris; and if such parties be or reside in Russia,

such conveyance may be acknowledged or proved before the consul of the United States appointed to reside at St. Petersburg.

Laws of 1816, 118.

§ 6. If the party to such conveyance be, or reside, within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, the same may be acknowledged or proved before the mayor of the city of London, the mayor or chief magistrate of the city of Dublin, or the provost or chief magistrate of the city of Edinburgh, or before the mayor or chief magistrate of Liverpool, or before the consul of the United States appointed to reside at London.

1 R. L., 370, § 3; Laws of 1817, 58.

Mayors, consuls, &c., in Great Britain.

§ 7. Such proof or acknowledgment, duly certified under the hand and seal of office, of such consuls, or of the said mayors or chief magistrates respectively, or of such minister or *charge des affaires*, shall have the like force and validity, as if the same were taken, before a justice of the supreme court of this state.

Laws of 1816, 118; 1 R. L., 370; Laws of 1817, 58.

Proofs, &c., how certified in foreign countries.

§ 8. Every such conveyance, heretofore made, or hereafter to be made, may be acknowledged or proved, without the United States, before any person specially authorised for that particular purpose, by a commission under the seal of the court of chancery of this state, to be issued to any reputable person residing in, or going to, the country where such proof or acknowledgment is to be taken; and the acknowledgment or proof so taken, shall be of the like force and validity, as if the same were taken before a justice of the supreme court of this state.

Proofs, &c., taken by special commission from chancery.

Laws of 1817, 58, § 1 & 2; see Laws of 1840, ch. 290.

§ 9. No acknowledgment of any conveyance having been executed, shall be taken by any officer, unless the officer taking the same, shall know, or have satisfactory evidence, that the person making such acknowledgment, is the individual described in, and who executed such conveyance.

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Requisites for acknowledgments.

1 R. L., 369, § 1 & 2; 25 W., 274; 19 W., 442; 13 W., 541; 4 W., 563; 2 Cow., 552; 11 J. R., 434; 6 J. R., 149; 1 J. R., 498.

§ 10. The acknowledgment of a married woman residing within this state, to a conveyance purporting to be executed by her, shall not be taken, unless in addition to the requisites contained in the preceding section, she acknowledge, on a private examination, apart from her husband, that she executed such conveyance, freely, and without any fear or compulsion of her husband; nor shall any estate of any such married woman, pass, by any conveyance not so acknowledged.

1b. when made by married women in this state.

4 N. Y., 15; 20 B., 371; 17 B., 660; 15 B., 337; 13 B., 54; 5 B., 227; 2 B. Ch., 268; 10 Pal., 346; 3 Pal., 121; 8 Cow., 283; 20 J. R., 201; 16 J. R., 110; 7 J. R., 86; 4 Ed., 73; 12 How. P. R., 441.

CHAP. 3.
Married
women
residing
out of this
state.

§ 11. When any married woman, not residing in this state, shall join with her husband, in any conveyance of any real estate, situated within this state, the conveyance shall have the same effect as if she were sole; and the acknowledgment or proof, of the execution of such conveyance by her, may be the same as if she were sole.

Proof by
subscribing
witness.

§ 12. The proof of the execution of any conveyance, shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in, and who executed such conveyance; and such proof shall not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to such instrument.

13 W., 541; 1 J. R., 498; 7 W., 366; 2 W., 555.

When and
how wit-
nesses to
deeds, com-
pelled to
testify con-
cerning
them.

§ 13. Upon the application of any grantee, in any conveyance, his heirs or personal representatives, or of any person claiming under them, verified by the oath of the applicant, that any witness to the conveyance, residing in the county where such application is made, refuses to appear and testify, touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorised to take the acknowledgment or proof of conveyances, except a commissioner of deeds, may issue a subpoena requiring such witness to appear and testify before such officer, touching the execution of such conveyance.

Penalty,
&c., for re-
fusal to ap-
pear to tes-
tify.

§ 14. Every person, who being served with such subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured, one hundred dollars; and may also be committed to prison by the officer who issued such subpoena, there to remain without bail, and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid.

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Certificate
of proof,
&c., to be
endorsed on
deed; its
contents.

§ 15. Every officer who shall take the acknowledgment or proof, of any conveyance, shall endorse a certificate thereof, signed by himself, on the conveyance; and in such certificate, shall set forth the matters herein before required to be done, known, or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

1 R. L., 369, § 1 & 2; 20 B., 371; 13 B., 54; 8 B., 562; 24 W., 92; 13 W., 541; 1 W., 406; Hop., 267; 2 Cow., 552; 4 Ed., 73.

Effect of
proof, &c.

§ 16. Every conveyance, acknowledged, or proved, and certified in the manner above prescribed, by any of the officers before named, may be read in evidence, without further proof thereof, and shall be entitled to be recorded.

1 R. L., 369, § 5; 25 W., 274.

Record,
&c., evi-
dence.

§ 17. The record of a conveyance duly recorded, or a tran-

script thereof, duly certified, may also be read in evidence, with the like force and effect as the original conveyance. Neither the certificate of the acknowledgment, or of the proof, of any conveyance, nor the record, or transcript of the record, of such conveyance, shall be conclusive, but may be rebutted, and the force and effect thereof, may be contested by any party affected thereby. If the party contesting the proof of a conveyance, shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such conveyance, nor the record thereof, shall be received in evidence until established by other competent proof.

CHAP. 3.

Certificate
not conclu-
sive.When not to
be evidence.

5 H., 36; 2 H., 54; 3 Du., 95.

§ 18. Where any conveyance shall be proved or acknowledged, before any judge of the county courts, not of the degree of counsellor at law, in the supreme court, or before any commissioner of deeds appointed for any county or city, it shall not be entitled to be read in evidence, or to be recorded, in any other county than that in which such judge or commissioner shall reside, unless in addition to the preceding requisites, there shall be subjoined to the certificate of proof or acknowledgment, signed by such judge or commissioner, a certificate under the hand and official seal of the clerk of the county, in which such judge or commissioner resides, specifying that such judge or commissioner was, at the time of taking such proof or acknowledgment, duly authorised to take the same, and that the said clerk is well acquainted with the handwriting of such judge or commissioner, and verily believes, that the signatures to the said certificate of proof or acknowledgment, is genuine.

Certificates
of certain
judges and
of commis-
sioners of
deeds, to be
authentica-
ted in cer-
tain cases
by county
clerk.

Laws of 1818, 44, § 5 & 8; 6 N. Y., 422; 1 N. Y., 77; 23 B., 559; 3 W., 180.

§ 19. The last section shall not apply to any conveyance executed by any agent for the Holland Land Company, or by any agent of the Pulteney estate, lawfully authorised to convey real estate.

Last sec-
tion qual-
ified.

§ 20. The certificate of the proof or acknowledgment of every conveyance, and the certificate of the genuineness of the signature of any judge or commissioner, in the cases where such last mentioned certificate is required, shall be recorded, together with the conveyance, so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such conveyance, nor the transcript thereof, shall be read, or received in evidence.

Certificates
to be re-
corded with
conveyance.

[760]

Effect of
omission.

Laws of 1818, 44, § 5.

§ 21. All conveyances of real estate, executed since the tenth day of March, one thousand eight hundred and twenty-five, or hereafter to be executed, by the treasurer of the state of Connecticut, which shall be acknowledged by him before the secretary of state of the state of Connecticut, and the

Convey-
ances by Treas-
urer of Con-
necti-
cat.

CHAP. 8.
Married
women
residing
out of this
state.

§ 11. When any married woman, not residing in this state, shall join with her husband, in any conveyance of any real estate, situated within this state, the conveyance shall have the same effect as if she were sole; and the acknowledgment or proof, of the execution of such conveyance by her, may be the same as if she were sole.

Proof by
subscribing
witness.

§ 12. The proof of the execution of any conveyance, shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in, and who executed such conveyance; and such proof shall not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to such instrument.

13 W., 541; 1 J. R., 498; 7 W., 366; 2 W., 555.

When and
how wit-
nesses to
deeds, com-
pelled to
testify con-
cerning
them.

§ 13. Upon the application of any grantee, in any conveyance, his heirs or personal representatives, or of any person claiming under them, verified by the oath of the applicant, that any witness to the conveyance, residing in the county where such application is made, refuses to appear and testify, touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorised to take the acknowledgment or proof of conveyances, except a commissioner of deeds, may issue a subpoena requiring such witness to appear and testify before such officer, touching the execution of such conveyance.

Penalty,
&c., for re-
fusal to ap-
pear to tes-
tify.

§ 14. Every person, who being served with such subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured, one hundred dollars; and may also be committed to prison by the officer who issued such subpoena, there to remain without bail, and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid.

[759]
Certificate
of proof,
&c., to be
endorsed on
deed; its
contents.

§ 15. Every officer who shall take the acknowledgment or proof, of any conveyance, shall endorse a certificate thereof, signed by himself, on the conveyance; and in such certificate, shall set forth the matters herein before required to be done, known, or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

1 R. L., 369, § 1 & 2; 20 B., 371; 13 B., 54; 8 B., 562; 24 W., 92; 13 W., 541; 1 W., 406; Hop., 267; 2 Cow., 552; 4 Ed., 73.

Effect of
proof, &c.

§ 16. Every conveyance, acknowledged, or proved, and certified in the manner above prescribed, by any of the officers before named, may be read in evidence, without further proof thereof, and shall be entitled to be recorded.

1 R. L., 369, § 5; 25 W., 274.

Record,
&c., evi-
dence.

§ 17. The record of a conveyance duly recorded, or a tran-

script thereof, duly certified, may also be read in evidence, with the like force and effect as the original conveyance. Neither the certificate of the acknowledgment, or of the proof, of any conveyance, nor the record, or transcript of the record, of such conveyance, shall be conclusive, but may be rebutted, and the force and effect thereof, may be contested by any party affected thereby. If the party contesting the proof of a conveyance, shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such conveyance, nor the record thereof, shall be received in evidence until established by other competent proof.

Certificate not conclusive.

When not to be evidence.

5 H., 36; 2 H., 54; 3 Du., 95.

§ 18. Where any conveyance shall be proved or acknowledged, before any judge of the county courts, not of the degree of counsellor at law, in the supreme court, or before any commissioner of deeds appointed for any county or city, it shall not be entitled to be read in evidence, or to be recorded, in any other county than that in which such judge or commissioner shall reside, unless in addition to the preceding requisites, there shall be subjoined to the certificate of proof or acknowledgment, signed by such judge or commissioner, a certificate under the hand and official seal of the clerk of the county, in which such judge or commissioner resides, specifying that such judge or commissioner was, at the time of taking such proof or acknowledgment, duly authorised to take the same, and that the said clerk is well acquainted with the handwriting of such judge or commissioner, and verily believes, that the signatures to the said certificate of proof or acknowledgment, is genuine.

Certificates of certain judges and of commissioners of deeds, to be authenticated in certain cases by county clerk.

Laws of 1818, 44, § 5 & 8; 6 N. Y., 422; 1 N. Y., 77; 23 B., 559; 3 W., 180.

§ 19. The last section shall not apply to any conveyance executed by any agent for the Holland Land Company, or by any agent of the Pulteney estate, lawfully authorised to convey real estate.

Last section qualified.

§ 20. The certificate of the proof or acknowledgment of every conveyance, and the certificate of the genuineness of the signature of any judge or commissioner, in the cases where such last mentioned certificate is required, shall be recorded, together with the conveyance, so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such conveyance, nor the transcript thereof, shall be read, or received in evidence.

Certificates to be recorded with conveyance.

[760]

Effect of omission.

Laws of 1818, 44, § 5.

§ 21. All conveyances of real estate, executed since the tenth day of March, one thousand eight hundred and twenty-five, or hereafter to be executed, by the treasurer of the state of Connecticut, which shall be acknowledged by him before the secretary of state of the state of Connecticut, and the

Conveyances by Treasurer of Connecticut.

TITLE 2.

by each person applying; which sum shall not be less than five dollars, nor more than thirty dollars.

1 R. L., 176, § 4; 7 B., 479; 14 J. R., 231; 15 W., 260.

[§79]
Licenses
how sign-
ed: fee
thereon;
how long in
force.

§ 5. The said licenses shall be signed by the commissioners granting the same, for which they shall collectively be entitled to receive the sum of seventy-five cents; they shall not be issued until the said allowance, and the duty fixed by the board, shall have been paid; when issued, they shall be in force, unless revoked, until the day after the first Monday in May in the succeeding year.

1 R. L., 176, § 1 & 4; 1 D., 150; 11 J. R., 178; 2 J. Ca., 346; see Laws of 1843, ch. 97.

When licen-
ses to sell
liquors to
be drank,
to be grant-
ed.

§ 6. Licenses shall not be granted to any person to sell strong and spirituous liquors and wines, to be drank in the house of the seller, unless such person proposes to keep an inn or tavern, nor unless the commissioners are satisfied that the applicant is of good moral character, that he is of sufficient ability to keep a tavern, and has the necessary accommodation to entertain travellers, and that a tavern is absolutely necessary for the actual accommodation of travellers, at the place where such applicant resides, or proposes to keep the same; all which shall be expressly stated in every such license.

1 R. L., 176, § 3; 7 B., 479; 1 H., 656; 15 W., 260; 14 J. R., 231.

Bonds by
tavern
keepers.

§ 7. Nor shall such license be granted, until the applicant shall have executed and delivered to the supervisor, or in case of his absence, one of the justices of the town, a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with a sufficient surety, to be approved by the board of commissioners, with a condition that such applicant, during the time he shall keep an inn or tavern, will not suffer it to be disorderly, or suffer any cock-fighting, gaming, or playing with cards or dice, or keep any billiard table or other gaming table, within the tavern so by him kept, or in any out-house, yard or garden, belonging thereto.

1 R. L., 176, § 6; 8 Cow., 139; see Laws of 1843, ch. 97.

Tavern
keepers to
provide cer-
tain arti-
cles.

§ 8. Every keeper of an inn or tavern, shall keep in his house at least two spare beds for his guests, with good and sufficient sheeting and covering for such beds; and shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travellers. For every neglect or default in having either of the articles herein required, such keeper shall forfeit five dollars, to be recovered by the overseers of the poor, for the use of the poor.

1 R. L., 176, § 9; 3 H., 156.

To keep a
sign.

§ 9. Every innholder or tavern-keeper, shall, within thirty days after obtaining his license, put up a proper sign, on or

adjacent to the front of his house, with his name thereon, indicating in some way that he keeps a tavern; and shall keep up such sign during the time he keeps a tavern. For every month's neglect to keep up such sign, he shall forfeit one dollar and twenty-five cents.

1 R. L., 176, § 15; see Laws of 1843, ch. 97.

§ 10. No person who has not at the time a license to keep a tavern shall erect or put up or keep up any sign indicating that he keeps a tavern; and whoever offends against this provision, shall forfeit one dollar and twenty-five cents for every day such sign shall be kept up.

Sign not to be put up by persons not licensed

§ 689

3 H., 156; Laws of 1843, ch. 97.

§ 11. No innholder or tavern-keeper, shall trust any persons other than those who may be lodgers in his house, or travelers not residing in the same city or town, for any sort of strong or spirituous liquors, or tavern expenses, above the sum of one dollar and twenty-five cents; nor shall he be capable of recovering the same by any suit. All securities given for such debts shall be void; and the innkeeper taking such securities, with intent to evade this provision, shall forfeit double the sum intended to be secured thereby.

Certain persons not to be trusted above a certain sum by innkeepers.

Penalty.

1 R. L., 176, § 12, 13 & 14; 2 Cai., 187.

§ 12. In all licenses that may be granted to grocers, or other persons applying for the same, (excepting tavern-keepers,) to sell strong or spirituous liquors, or wines, in quantities less than five gallons, there shall be inserted an express declaration that such license shall not be deemed to authorise such sale of any liquor, or wine, to be drank in the house or shop of the person receiving such license, or in any out-house, yard, or garden appertaining thereto, or connected therewith.

Special clause to be inserted in licenses to grocers, &c.

15 W., 260.

§ 13. Such licenses, to grocers, shall not be granted, unless the commissioners are satisfied that the applicant is of good moral character, nor until such applicant shall have executed a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with such surety as shall be approved by the commissioners, conditioned that, during the term for which his license shall be granted, he will not suffer his grocery to become disorderly; that he will not sell, or suffer to be sold, any strong or spirituous liquors, or wines, to be drank in his shop, or house, or in any out-house, yard, or garden appertaining thereto; and that he will not suffer any such liquor, sold by virtue of such license, to be drank in his shop, or house, or in any out-house, yard, or garden belonging thereto.

Bond to be given by grocers.

Its condition.

§ 14. Whenever any bond required by this Title, shall be drawn by any commissioner of excise, he shall not demand or receive therefor any greater fee than twenty-five cents.

Fee for drawing bond.

§ 15. Whoever shall sell any strong or spirituous liquors, or any wines in any quantity less than five gallons at a time,

Penalty for selling under 5 gal-

TITLE 2.

by each person applying; which sum shall not be less than five dollars, nor more than thirty dollars.

1 R. L., 176, § 4; 7 B., 479; 14 J. R., 231; 15 W., 260.

[679]

Licenses how signed: fee thereon; how long in force.

§ 5. The said licenses shall be signed by the commissioners granting the same, for which they shall collectively be entitled to receive the sum of seventy-five cents; they shall not be issued until the said allowance, and the duty fixed by the board, shall have been paid; when issued, they shall be in force, unless revoked, until the day after the first Monday in May in the succeeding year.

1 R. L., 176, § 1 & 4; 1 D., 150; 11 J. R., 178; 2 J. Ca., 346; see Laws of 1843, ch. 97.

When licenses to sell liquors to be drank, to be granted.

§ 6. Licenses shall not be granted to any person to sell strong and spirituous liquors and wines, to be drank in the house of the seller, unless such person proposes to keep an inn or tavern, nor unless the commissioners are satisfied that the applicant is of good moral character, that he is of sufficient ability to keep a tavern, and has the necessary accommodation to entertain travellers, and that a tavern is absolutely necessary for the actual accommodation of travellers, at the place where such applicant resides, or proposes to keep the same; all which shall be expressly stated in every such license.

1 R. L., 176, § 3; 7 B., 479; 1 H., 656; 15 W., 260; 14 J. R., 231.

Bonds by tavern keepers.

§ 7. Nor shall such license be granted, until the applicant shall have executed and delivered to the supervisor, or in case of his absence, one of the justices of the town, a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with a sufficient surety, to be approved by the board of commissioners, with a condition that such applicant, during the time he shall keep an inn or tavern, will not suffer it to be disorderly, or suffer any cock-fighting, gaming, or playing with cards or dice, or keep any billiard table or other gaming table, within the tavern so by him kept, or in any out-house, yard or garden, belonging thereto.

1 R. L., 176, § 6; 8 Cow., 139; see Laws of 1843, ch. 97.

Tavern keepers to provide certain articles.

§ 8. Every keeper of an inn or tavern, shall keep in his house at least two spare beds for his guests, with good and sufficient sheeting and covering for such beds; and shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travellers. For every neglect or default in having either of the articles herein required, such keeper shall forfeit five dollars, to be recovered by the overseers of the poor, for the use of the poor.

1 R. L., 176, § 9; 3 H., 156.

To keep a sign.

§ 9. Every innholder or tavern-keeper, shall, within thirty days after obtaining his license, put up a proper sign, on or

adjacent to the front of his house, with his name thereon, indicating in some way that he keeps a tavern; and shall keep up such sign during the time he keeps a tavern. For every month's neglect to keep up such sign, he shall forfeit one dollar and twenty-five cents.

1 R. L., 176, § 15; see Laws of 1843, ch. 97.

§ 10. No person who has not at the time a license to keep a tavern shall erect or put up or keep up any sign indicating that he keeps a tavern; and whoever offends against this provision, shall forfeit one dollar and twenty-five cents for every day such sign shall be kept up.

Sign not to be put up by persons not licensed
[630]

3 H., 156; Laws of 1843, ch. 97.

§ 11. No innholder or tavern-keeper, shall trust any persons other than those who may be lodgers in his house, or travelers not residing in the same city or town, for any sort of strong or spirituous liquors, or tavern expenses, above the sum of one dollar and twenty-five cents; nor shall he be capable of recovering the same by any suit. All securities given for such debts shall be void; and the innkeeper taking such securities, with intent to evade this provision, shall forfeit double the sum intended to be secured thereby.

Certain persons not to be trusted above a certain sum by innkeepers.

Penalty.

1 R. L., 176, § 12, 13 & 14; 2 Cai., 187.

§ 12. In all licenses that may be granted to grocers, or other persons applying for the same, (excepting tavern-keepers,) to sell strong or spirituous liquors, or wines, in quantities less than five gallons, there shall be inserted an express declaration that such license shall not be deemed to authorise such sale of any liquor, or wine, to be drank in the house or shop of the person receiving such license, or in any out-house, yard, or garden appertaining thereto, or connected therewith.

Special clause to be inserted in licenses to grocers, &c.

15 W., 280.

§ 13. Such licenses, to grocers, shall not be granted, unless the commissioners are satisfied that the applicant is of good moral character, nor until such applicant shall have executed a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with such surety as shall be approved by the commissioners, conditioned that, during the term for which his license shall be granted, he will not suffer his grocery to become disorderly; that he will not sell, or suffer to be sold, any strong or spirituous liquors, or wines, to be drank in his shop, or house, or in any out-house, yard, or garden appertaining thereto; and that he will not suffer any such liquor, sold by virtue of such license, to be drank in his shop, or house, or in any out-house, yard, or garden belonging thereto.

Bond to be given by grocers.

Its condition.

§ 14. Whenever any bond required by this Title, shall be drawn by any commissioner of excise, he shall not demand or receive therefor any greater fee than twenty-five cents.

Fee for drawing bond.

§ 15. Whoever shall sell any strong or spirituous liquors, or any wines in any quantity less than five gallons at a time,

Penalty for selling under 5 gal-

TITLE 2.

by each person applying; which sum shall not be less than five dollars, nor more than thirty dollars.

1 R. L., 176, § 4; 7 B., 479; 14 J. R., 231; 15 W., 260.

[§79]

Licenses how signed: fee thereon; how long in force.

§ 5. The said licenses shall be signed by the commissioners granting the same, for which they shall collectively be entitled to receive the sum of seventy-five cents; they shall not be issued until the said allowance, and the duty fixed by the board, shall have been paid; when issued, they shall be in force, unless revoked, until the day after the first Monday in May in the succeeding year.

1 R. L., 176, § 1 & 4; 1 D., 150; 11 J. R., 178; 2 J. Ca., 346; see Laws of 1843, ch. 97.

When licenses to sell liquors to be drank, to be granted.

§ 6. Licenses shall not be granted to any person to sell strong and spirituous liquors and wines, to be drank in the house of the seller, unless such person proposes to keep an inn or tavern, nor unless the commissioners are satisfied that the applicant is of good moral character, that he is of sufficient ability to keep a tavern, and has the necessary accommodation to entertain travellers, and that a tavern is absolutely necessary for the actual accommodation of travellers, at the place where such applicant resides, or proposes to keep the same; all which shall be expressly stated in every such license.

1 R. L., 176, § 3; 7 B., 479; 1 H., 656; 15 W., 260; 14 J. R., 231.

Bonds by tavern keepers.

§ 7. Nor shall such license be granted, until the applicant shall have executed and delivered to the supervisor, or in case of his absence, one of the justices of the town, a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with a sufficient surety, to be approved by the board of commissioners, with a condition that such applicant, during the time he shall keep an inn or tavern, will not suffer it to be disorderly, or suffer any cock-fighting, gaming, or playing with cards or dice, or keep any billiard table or other gaming table, within the tavern so by him kept, or in any out-house, yard or garden, belonging thereto.

1 R. L., 176, § 6; 8 Cow., 139; see Laws of 1843, ch. 97.

Tavern keepers to provide certain articles.

§ 8. Every keeper of an inn or tavern, shall keep in his house at least two spare beds for his guests, with good and sufficient sheeting and covering for such beds; and shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travellers. For every neglect or default in having either of the articles herein required, such keeper shall forfeit five dollars, to be recovered by the overseers of the poor, for the use of the poor.

1 R. L., 176, § 9; 3 H., 156.

To keep a sign.

§ 9. Every innholder or tavern-keeper, shall, within thirty days after obtaining his license, put up a proper sign, on or

adjacent to the front of his house, with his name thereon, indicating in some way that he keeps a tavern; and shall keep up such sign during the time he keeps a tavern. For every month's neglect to keep up such sign, he shall forfeit one dollar and twenty-five cents.

1 R. L., 176, § 15; see Laws of 1843, ch. 97.

§ 10. No person who has not at the time a license to keep a tavern shall erect or put up or keep up any sign indicating that he keeps a tavern; and whoever offends against this provision, shall forfeit one dollar and twenty-five cents for every day such sign shall be kept up.

Sign not to be put up by persons not licensed
[680]

3 H., 156; Laws of 1843, ch. 97.

§ 11. No innholder or tavern-keeper, shall trust any persons other than those who may be lodgers in his house, or travelers not residing in the same city or town, for any sort of strong or spirituous liquors, or tavern expenses, above the sum of one dollar and twenty-five cents; nor shall he be capable of recovering the same by any suit. All securities given for such debts shall be void; and the innkeeper taking such securities, with intent to evade this provision, shall forfeit double the sum intended to be secured thereby.

Certain persons not to be trusted above a certain sum by innkeepers.

Penalty.

1 R. L., 176, § 12, 13 & 14; 2 Cai., 187.

§ 12. In all licenses that may be granted to grocers, or other persons applying for the same, (excepting tavern-keepers,) to sell strong or spirituous liquors, or wines, in quantities less than five gallons, there shall be inserted an express declaration that such license shall not be deemed to authorize such sale of any liquor, or wine, to be drank in the house or shop of the person receiving such license, or in any out-house, yard, or garden appertaining thereto, or connected therewith.

Special clause to be inserted in licenses to grocers, &c.

15 W., 260.

§ 13. Such licenses, to grocers, shall not be granted, unless the commissioners are satisfied that the applicant is of good moral character, nor until such applicant shall have executed a bond to the people of this state, in the penal sum of one hundred and twenty-five dollars, with such surety as shall be approved by the commissioners, conditioned that, during the term for which his license shall be granted, he will not suffer his grocery to become disorderly; that he will not sell, or suffer to be sold, any strong or spirituous liquors, or wines, to be drank in his shop, or house, or in any out-house, yard, or garden appertaining thereto; and that he will not suffer any such liquor, sold by virtue of such license, to be drank in his shop, or house, or in any out-house, yard, or garden belonging thereto.

Bond to be given by grocers.

Its condition.

§ 14. Whenever any bond required by this Title, shall be drawn by any commissioner of excise, he shall not demand or receive therefor any greater fee than twenty-five cents.

Fee for drawing bond.

§ 15. Whoever shall sell any strong or spirituous liquors, or any wines in any quantity less than five gallons at a time,

Penalty for selling under 5 gal-

TITLE 2.
Laws with-
out license.

without having a license therefor granted as herein directed, shall forfeit twenty-five dollars.

1 R. L., 178, § 7; 10 N. Y., 164; 20 B., 246; 12 B., 23; 3 H., 527; 3 D., 44, 226, 437; 1 D., 541; 19 W., 363; 1 Cow., 77; 3 Cai., 137; 17 How. P. R., 443; 13 How. P. R., 74; 13 J. R., 263.

Penalty for
selling li-
quor to be
drank in
house, &c.,
without
license.

[681]

§ 16. Whoever shall sell any strong or spirituous liquors or wines to be drank in his house or shop, or in any out-house, yard or garden appertaining thereto, or shall suffer any such liquors or wines sold by him or under his direction or authority, to be drank in his house or shop, or in any out-house, yard or garden appertaining thereto, without having obtained a license therefor as a tavern-keeper, shall forfeit twenty-five dollars.

1 R. L., 176, § 7; 16 N. Y., 299; 15 W., 260; 13 J. R., 253; 19 W., 363.

Penalty for
selling
liquor to
minors,
apprentices
or servants.

§ 17. No tavern-keeper, grocer, or other person licensed to sell any strong or spirituous liquors or wines, shall sell any such liquors or wines to any apprentice or servant, knowing or having reason to believe him to be such, without the consent of his master; nor to any minor under the age of fourteen years, without the consent of his father or mother or guardian. Whoever shall offend against either of these provisions, shall forfeit five dollars, to be recovered by the master of such apprentice or servant, or by the parent or guardian of such minor.

1 R. L., 176, § 11.

Not to re-
ceive pro-
perty, &c.,
in payment
or pledge,
for liquors
sold to
minors, &c.

§ 18. No tavern-keeper, grocer, or other person shall directly or indirectly take or receive from any such apprentice or servant or minor, any clothing, or any goods, money or things in action, in payment for any strong or spirituous liquors or wines, sold to such apprentice, servant or minor, or in pawn or pledge to secure any such payment. Whoever shall offend against this provision, shall forfeit three times the sum or value of the money or articles so received, to the master of such apprentice or servant, or to the parent or guardian of such minor, as the case may be, to be recovered by them, together with the money or articles so received.

1 R. L., 176, § 12.

By whom
penalties to
be collected

§ 19. The penalties imposed by this Title, shall be sued for and recovered by the overseers of the poor of the town where the offence is committed, except in those cases where other special provisions are made.

1 R. L., 176, § 16; Laws of 1820, 30, § 1; 10 N. Y., 164; see Laws of 1836, ch. 272; 1842, ch. 157; 1845, ch. 300.

Bonds when
and where
to be filed.

§ 20. Every bond taken pursuant to the provisions of this Title, within five days after the execution of the same, shall be filed in the office of the clerk of the town, city or village, in which the license shall be granted.

Prosecu-
tions on
breach of
bonds.

§ 21. Whenever a breach of the condition of such bond shall happen, it shall be the duty of the supervisor of the town, mayor of the city, or trustees of the village in which

such bond was executed, to prosecute the same and recover the penalty thereof for the use of the poor.

§ 22. Whenever any conviction or judgment shall be obtained against any person licensed to sell strong or spirituous liquors or wines, for any violation of the provisions of this Title, either in a suit for a penalty, or in a suit upon the bond given by such person, it shall be the duty of the justice or court before whom the same shall be had, to transmit to the next court of general sessions of the peace of the county, a statement of such conviction or judgment, and of the offence for which it was obtained.

Certain convictions and judgments to be sent to general sessions.

§ 23. The said court shall cause the person against whom such conviction or judgment was obtained, to be notified to appear on such day as the court shall appoint, to show cause why any license that may have been granted to him to sell strong or spirituous liquors or wines, should not be revoked. At the day appointed, and at such other days as the court shall appoint, it shall proceed to inquire into the circumstances, and may in its discretion revoke and annul any such license. If such conviction or judgment be for a second or other offence after the first, the court shall revoke and annul such license.

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License when to be revoked.

§ 24. Upon any order being entered for the revocation of any such license, the said license shall be annulled and altogether void; and the person whose license shall be so revoked, shall be incapable of receiving any license to sell strong or spirituous liquors or wines, for the space of three years from the time of such revocation.

Consequence of revoking license.

§ 25. All offences against the provisions of this Title shall be deemed misdemeanors, punishable by fine and imprisonment.

Violations of this title, misdemeanors.

1 R. L., 176, § 17; 13 How. P. R., 74.

§ 26. No person shall be subject to be prosecuted by virtue of the provisions of this Title, for selling metheglin, currant wine, cherry wine, or cider.

Exception of cider, &c.

1 R. L., 176, § 7.

§ 27. The preceding provisions of this Title shall not extend to the city of New-York; nor shall they impair the powers of any corporation of any other city, town or village, or of the trustees of any village, specially authorised by law to grant licenses to sell strong or spirituous liquors, but such powers shall be exercised in the manner herein prescribed by such corporation, or the officers authorised by it, instead of the board of commissioners of excise herein created.

Application of this title to New York and other cities, and to villages, &c.

10 W., 547; 13 W., 325.

§ 28. The preceding provisions of this Title shall not extend to any person selling strong or spirituous liquor or any wines, on board any boat or vessel navigating any river, lake, canal, or other stream within this state.

Not to extend to vessels and boats.

15 W., 217.

§ 29. Whenever any boat or vessel of any description,

Penalty for selling

TITLE 12.
Liquor under 5 gallons, on board vessels or boats.

How collected and applied.

[633]
Excise monies in certain counties to be paid to county treasurer.

navigating any river, lake, canal or other navigable water within this state, shall remain at any city, town, village or other place, for a longer time than one hour, no strong or spirituous liquor or wine shall be sold in any quantity less than five gallons, on board of such boat or vessel while so remaining beyond such hour, to any person or persons whatever, under the penalty of twenty-five dollars for each offence.

§ 30. Every penalty incurred by selling strong or spirituous liquor on board a steam-boat or canal boat, shall be sued for and recovered by and in the name of the overseers of the poor of the town or city in which the offence was committed, and shall be appropriated to the use of the poor.

§ 31. In those counties in which the distinction between town and county poor is or shall be abolished, all monies received for excise duty in any city or village, except the city of New-York, shall be paid into the county treasury for the support of the poor; and the same remedies may be had for the collection thereof, by the county treasurer against the trustees, or other persons receiving the same, as in the case of commissioners of excise of a town.

16 How. P. R., 260; see Laws of 1845, ch. 300; 1843, ch. 97; 1842, ch. 157; 1835, ch. 272.

TITLE X.

OF THE NAVIGATION OF RIVERS AND LAKES, AND THE OBSTRUCTION OF CERTAIN WATERS.

- Sco.**
1. Steam-boats meeting, to pass to the right of each other.
 2. Passengers not to be put in small boats, until they are disengaged.
 3. Engine to be stopped at certain times.
 4. Passengers may be landed by line hauled by hand.
 5. Engine to stop during landing, except in certain cases.
 6. Oars to be kept in small boats; signals when to be given.
 7. Steam-boats going the same direction, how far to keep from each other.
 8. Lights to be carried in the night time.
 9. Penalties, how collected and applied.
 10. Penalties incurred by masters, may be recovered of owners.
 11. Attaching line to machinery of boat, how punished.
 12. Vessels in Hudson river, &c., to show lights in night time.
 13. The first 14 sections of this Title, to be posted in every steam-boat.
 14. Definition of the term "master." m
 15. Nets and other obstructions in channel of Hudson river, forbidden.
 16. Obstructions below New-York forbidden.
 17. Qualification of last section, as to certain waters.
 18. Penalties for obstructions in Hudson river, out of its channel.

Steam-boats to pass on the starboard side of each other.

§ 1. Whenever any steam-boats shall meet each other on the waters of the Hudson river, or on any other waters within the jurisdiction of this state, each boat so meeting shall go towards that side of the river or lake which is to the starboard or right side of such boat, so as to enable the boats so meeting, to pass each other with safety.

Laws of 1826, 252, § 1 & 2.

§ 2. Whenever any passenger is about to be landed from any steam-boat navigating the waters of this state, and such steam-boat shall not be so near the shore, that the passenger can be landed immediately from the steam-boat on the shore, no passenger shall be put or suffered to go into any small boat, for the purpose of being landed, until such small boat shall be completely afloat, and wholly disengaged from the steam-boat, except by a painter.

§ 3. While any passenger is getting into a small boat, from a steam-boat, for the purpose of being landed, the engine of the steam-boat shall be stopped, and when any passenger is taken on board of any small boat belonging to any steam-boat, the engine of such steam-boat shall be stopped while such small boat is at the shore, and until such passenger shall have left the small boat and be on board of the steam-boat, except as herein after specified.

Laws of 1828, 204, § 2, 3, 4 & 5.

§ 4. Passengers may be landed in a small boat by means of a line from the steam-boat, and boats from the shore containing passengers may be drawn to a steam-boat, by means of a line hauled in by hand; but in no case shall the line be attached to, or hauled in, by the machinery of the steam-boat.

§ 5. During the time of landing and receiving any passenger, the engine of the steam-boat shall not be put in motion, except,

1. To give sufficient force to carry the small boat to the shore; or,

2. To keep the steam-boat in proper direction, and to prevent her from drifting or being driven on shore.

§ 6. In every small boat, while landing or receiving any passenger from or on board of any steam-boat, there shall be kept a good and sufficient pair of oars suitable for such small boat; and in landing or receiving any passenger in the night time, there shall be a signal given from the small boat at the shore, by means of a horn or trumpet, to enable those having charge on board the steam-boat, to determine when the small boat, having landed or received her passengers, is ready to leave the shore.

§ 7. Whenever any steam-boat shall be going in the same direction with another steam-boat ahead of it, it shall not be lawful to navigate the first mentioned boat so as to approach, or pass the other boat so being ahead, within the distance of twenty yards; and it shall not be lawful so to navigate the steam-boat so being ahead, as unnecessarily to bring it within twenty yards of the steam-boat following it.

§ 8. Whenever any steam-boat shall be navigating in the night time, the master of such boat shall cause her to carry and show two good and sufficient lights, one of which shall be exposed near her bows, and the other near her stern, and the last shall be at least twenty feet above her deck.

Laws of 1826, 253, § 3 & 4; 4 S. S. C., 506.

TITLE 10.
Small boats
to be disen-
gaged be-
fore passen-
gers put on
board them.

When en-
gine to be
stopped.

[§ 4]

When line
may be
used to
land pas-
sengers.
&c.

During
landing,
&c., of
passen-
gers, engine
to stop.

Oars in
small boats.

Signals.

Navigation
of steam-
boats going
the same
direction.

To carry
lights in
night time.

TITLE 10.
Penalty for
violating
last sec-
tions.

How col-
lected.

Where paid

Certain de-
ductions.

[685]

§ 9. Every master of any steam-boat, who shall violate either of the preceding eight sections, shall for every such offence, forfeit the sum of two hundred and fifty dollars, to be sued for in the name of the people, by the district attorney of any county bordering on the waters on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence. The penalty, when recovered, shall be paid into the county treasury of the county for which such district attorney shall have been appointed, for the use of the poor of the county, except that the court in which the recovery shall be had, may order such portion thereof, not exceeding twenty-five dollars, as it shall deem just, to be paid to the district attorney by whom the suit shall have been prosecuted, as a compensation for his services and expenses, beyond the taxable costs to be recovered by him.

Laws of 1826, 252, § 1, 2, 3, 4, 8; see Laws of 1848, ch. 321.

Owners
liable for
penalties
incurred by
masters.

§ 10. The owners of every steam-boat shall be deemed responsible for the good conduct of the masters employed by them; and if any penalty incurred by such master cannot be collected of him by due course of law, the same may be recovered of the owners of the boat in whose employ he was at the time such offence was committed, jointly and severally, in the same manner as if they were sureties of such master.

1 H., 481; see Laws of 1829, ch. 314.

Punish-
ment
for attach-
ing line to
machinery
of boat, &c.

§ 11. In case any line used for the purpose of landing or receiving passengers, shall be attached in any way to the machinery of any steam-boat, or the small boat shall be hauled in by means of such machinery, the person having the command or charge of such steam-boat, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, in the discretion of the court before which such conviction shall be had; but such fine shall not exceed two hundred and fifty dollars, and such imprisonment three months.

Laws of 1828, 205, § 7.

Vessels to
show lights
in night
time.

Penalty.

When
owners of
vessels li-
able for.

§ 12. Whenever any vessel navigating that part of the Hudson river which is north of the battery, at the southern extremity of New-York, or navigating lake Champlain, shall be at anchor in the night time, the master of such vessel shall cause her peak to be lowered, and shall cause a good and sufficient light to be shown in some part of her rigging, at least twenty feet above her deck, and from her taffril; under the penalty of fifty dollars, to be sued for and recovered, against the master of such vessel, by the overseers of the poor of the city or town in which the offence shall have been committed. And in case such penalty cannot be collected from the master, the owners of such vessel shall be liable therefor, as provided in the preceding tenth section.

Laws of 1826, 254, § 5; see Laws of 1839, ch. 349.

§ 13. It shall be the duty of the master of every steam-boat navigating the waters of this state, to keep a copy of the first fourteen sections of this Title posted in a conspicuous place in such boat, for the inspection of all persons on board the same; and in case of neglect herein, every such master shall forfeit at the rate of twenty-five dollars per month, for all the time during which he shall be guilty of such neglect, to be sued for and recovered in the name of the people of this state, by the district attorney of any county bordering on the waters on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence. The penalty, when recovered, shall be for the use of the poor of the county for which the district attorney, by whom the suit shall have been prosecuted, was appointed.

Laws of 1826, 255, § 8 & 12.

§ 14. The term "master," whenever it occurs in the foregoing sections, shall be construed to apply to every person having, for the time, the charge, control or direction of any steam-boat, or other vessel comprised within the provisions of those sections.

See Laws of 1841, ch. 65; 1837, ch. 153.

§ 15. No person shall make use of any set-nets, weirs, hoop-nets, or fikes in the channel of Hudson river, at any place between the city of New-York and the state dam at Fort-Edward; nor shall any person set, drive or place, or cause to be set, driven or placed, any hedge, stake, stone, post, pole, anchor, or any other fixture, for any purpose whatever, in the said channel, at any place within the points above specified.

Laws of 1815, 148, § 1 & 2.

§ 16. No person shall set or place, or cause to be set or placed, during the months of March, April or May, in any year, in any of the waters of this state at or below the city of New-York, any fike-net, gill-net, hoop-net, set-net, or any other net or weir, by means of any hedge, stake, stone, post, pole, anchor, or any other fixture, to extend into the channel of said waters, or to any greater distance from the shore, in any case, than twenty rods from the ordinary low water mark. Whoever shall violate the provisions of this or of the preceding section, shall, for every offence, forfeit the sum of one hundred and fifty dollars, for the use of the poor of the county in which such offence shall be committed, to be sued for in the name of the people, by the district attorney of any county bordering on the waters on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence.

Laws of 1815, 148, § 5 & 6; Laws of 1816, 188, § 1; 1820, 27.

§ 17. The last preceding section shall not be construed to affect any special regulation heretofore made by law, and now in force, concerning the placing of nets or obstructions in the

TITLE 12.
First 14
sections to
be posted in
every
steamboat.

Penalty for
neglect.

How recovered and
applied.

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Term
"master"
defined.

Prohibition
against ob-
structions
in channel
of Hudson
river.

Obstruc-
tions at
and below
New York.

Penalty for
violations
of this and
last section.

Last sec-
tion qual-
ified.

TITLE II.

waters adjacent to Staten-Island, and to the town of New-Utrecht.

Same references, and Laws of 1822, 107.

Provisions
against ob-
structions
out of chan-
nel of Hud-
son river.

§ 18. No person shall make use of any fike-net, gill-net, hoop-net, set-net, or any other net or weir, nor set, drive or place any hedge, stake, stone, post, pole, anchor, or any other fixture, in any part of Hudson river, out of the channel thereof, between the city of New-York and the state dam at Fort-Edward, other than such as are permitted to be used or placed for the purpose of catching fish, in the next Title of this Chapter. Whoever shall violate either of the provisions of this section, shall, for every offence, forfeit the sum of twenty-five dollars, for the use of the poor of the city or town in which such offence shall be committed; and shall be liable to indictment for a misdemeanor, punishable on conviction, by a fine not exceeding five dollars, or by imprisonment in a county jail not exceeding thirty days, or by both such fine and imprisonment.

Laws of 1815, 148; 1828, 309 § 1.

See Laws of 1841, ch. 65; 1839, ch. 349, 175, 112; 1837, ch. 153; 1829, ch. 314; 1849, ch. 411; 1844, ch. 248; 1855, ch. 556; 1845, ch. 243; 1836, ch. 127.

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TITLE XI.

OF FISHERIES GENERALLY, AND PARTICULARLY IN HUDSON RIVER, AND AT AND BELOW THE CITY OF NEW-YORK.

- SEC. 1. *Coccolus indicus* not to be thrown into streams.
 2. Penalty for violating last section.
 3. Salmon not to be taken between certain days.
 4. Fish not to be taken in certain waters on Sunday.
 5 & 6. Fishing with seines or nets on Sunday in any waters, prohibited.
 7. Drift nets not to be used, during certain months.
 8. Fishing prohibited except on certain days.
 9. Penalty for violating two last sections.
 10. Penalty for spearing pike between Fort-Miller dam and Waterford.
 11. Nets of certain description may be used in parts of Hudson river.
 12. Certain poles, &c. may be set in that river, out of its channel.
 13. Penalties how applied: by whom sued for.
 14. Laws concerning fisheries adjacent to Staten-Island.
 15. Courts of common pleas may regulate fishing.
 16. Orders not to continue in force more than three years.
 17. Not to be made or altered, without application of six freeholders.
 18. Notice of application for any order, &c. how to be given.
 19. Orders to be entered in minutes of court; to be published.
 20. Orders to take effect after such publication.
 21. Expenses of application, &c. by whom to be paid.

Use of *coccolus indicus* prohibited.

§ 1. No person shall put, cast, or throw, into any of the waters of this state, for the purpose of taking or destroying any fish being in any of said waters, any of the berry commonly called *coccolus indicus*, whether it be mixed with any other substance or not.

Laws of 1822, 225, § 12.

§ 2. Whoever shall violate either of the provisions contained in the preceding section of this Title, shall, for every offence, forfeit the sum of twenty-five dollars.

TITLE II.
Penalty.

§ 3. No person shall catch, take, or destroy, any of the fish usually called salmon, in any of the waters of this state, between the twentieth day of October, in any year, and the first day of February thereafter; and whoever shall violate the provisions of this section, shall for every offence, forfeit the sum of ten dollars.

Penalty for taking salmon at certain times.

Laws of 1816, 188, § 2.

§ 4. Between the same periods, in any year, no person shall fish with seines, or set, or draw, or raise any sort of nets, or in any manner take fish, in any of the waters of this state, at or below the city of New-York, after the setting of the sun on Saturday of each week, until the rising of the sun on Monday following.

When fish not to be taken on Sunday.

§ 5. No person shall fish with seines, or set, or draw, or raise, any sort of nets, in any of the waters within this state, between twelve o'clock at night of Saturday, in each week, and twelve o'clock at night of the following Sunday.

Fishing with seines, &c., on Sunday.

Laws of 1815, 149, § 4; 1816, 188, § 2; 1822, 108, § 4.

§ 6. Every person who shall violate either of the provisions of the two last preceding sections, shall for every offence, forfeit the sum of twenty-five dollars, but shall not be liable to any penalty imposed in the eighth Title of this Chapter.

Penalty for violating two last sections.

§ 7. During the months of March, April or May, in any year, no person shall use or employ any drift-net, in any of the waters of this state, at or below the city of New-York.

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Drift-nets in certain waters.

Laws of 1815, 149, § 4 & 6.

§ 8. During the same months, in any year, no person shall fish in any manner, on Saratoga or Fort-Miller falls, except on Monday, Friday and Saturday, in each week.

Fishing at Saratoga or Fort-Miller falls.

§ 9. Whoever shall violate either of the provisions of the two last preceding sections, shall for every offence, forfeit the sum of twenty-five dollars.

Penalty for violating two last sections.

§ 10. No person shall spear any fish commonly called pike, in the waters of the Hudson river, between the Fort-Miller dam and the village of Waterford; and whoever shall violate this provision, shall forfeit, for every offence, the sum of ten dollars.

Spearing pike in certain place.

Laws of 1827, 97.

§ 11. Hoop-nets, fikes, or set-nets, may be used for catching fish in Hudson's river, on the flats, and along the flats and shores between the city of New-York and the state dam at Fort-Edward, provided they be constructed with buoys not exceeding four feet in length, and two feet in diameter; but such hoop-nets, fikes, or set-nets, shall not be used in the channel of said river, nor in any place that was occupied, or used, prior to the eleventh day of April, one thousand eight hundred and fifteen, for the purpose of drawing seines.

Certain nets may be used in parts of Hudson river.

Laws of 1815, 148, § 1 & 2.

TITLE 11.
Poles, &c.,
connected
therewith,
may be set,
&c.

§ 12. Such poles, stakes, or timber, as may be necessary in fishing with the hoop-nets, fikes, or set-nets authorised in the preceding section, may be set in any part of Hudson's river, out of the channel thereof, between the points mentioned in the last preceding section, provided the navigation of said river be not thereby obstructed or endangered.

Suits for
penalties.

§ 13. All penalties imposed in the preceding sections of this Title, shall be for the use of the poor, and shall be sued for and recovered by the overseers of the poor of the city or town in which the offence shall be committed.

This title
not to apply
to Staten
Island.

§ 14. Nothing contained in the preceding sections of this Title shall be construed to affect any special provisions heretofore made by law, and now in force, concerning the fisheries in the waters adjacent to Staten-Island.

Powers of
common
pleas to
regulate
fisheries.

§ 15. The courts of common pleas in the several counties of this state, shall have power to regulate the fishing in any of the streams, ponds, or lakes, in their respective counties; and to make such order and rule to prevent the destruction of fish therein, as they shall deem proper; and from time to time to remove any restriction against fishing therein, heretofore imposed by law, except the restriction against fishing on Sunday, herein before provided. They shall also have power to prescribe such penalties for the violation of any such order or rule, not exceeding twenty-five dollars for each offence, as they shall deem proper.

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To pre-
scribe
penalties.

This and the remaining sections of this Title, are taken, with some variations, from Laws of 1826, 246, § 1, 2, 3.

Duration of
orders, &c.

§ 16. No such order or rule shall be made, at any one time, to continue in force for any longer term than three years; and every such rule or order may, from time to time, be altered, modified, or annulled by such courts, in their discretion.

Pre-requi-
site to any
order.

§ 17. No such order or rule shall be made, except upon the application of at least six freeholders of the town or towns in which such stream, pond, or lake, is situated, nor shall any such order or rule be altered, modified, or annulled, except upon the like application.

Notice of
application
for order.

§ 18. Before the making of any such application, a notice, signed by the persons making the same, and setting forth the object of the intended application, and the time when the same is to be made, shall be posted up on the outer door of the court-house of the county in which such stream, pond, or lake is situated, at least three weeks before the making of such application, and shall be published three weeks successively in one of the newspapers printed in such county, or if there be no newspaper printed therein, then in the newspaper printed nearest to the stream, lake, or pond, mentioned in the notice. And before the court shall proceed to make, alter, modify, or annul any such order or rule, due proof shall be produced of the posting and publishing of such notice as herein required.

§ 19. Every such order or rule, when granted, shall be entered at length by the clerk of the county, in the minutes of the court, kept by him; and a certified copy thereof shall be immediately posted by him on the outer door of the courthouse of the same county, and continued for six Mondays successively, after the granting of such order or rule. Such copy shall also be published for three weeks successively in a newspaper, as provided in the last preceding section.

§ 20. After such order or rule shall have been duly posted and published for the period above prescribed, it shall be binding on all persons; and every person who shall violate the same, shall, for every such offence, forfeit the sum prescribed therein, for the use of the poor.

§ 21. The costs and expenses incident to every application for any such order or rule, shall be paid by the persons who shall have signed the notice of the application.

See Laws of 1831, ch. 203; 1840, ch. 267; 1845, ch. 31; 1849, ch. 194; 1851, ch. 478; 1857, ch. 497; ch. 290; ch. 732; ch. 514; 1858, ch. 163.

TITLE 12.
Orders to be entered, posted and published.

When orders to take effect.

Expenses, by whom paid.

TITLE XII.

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OF WRECKS.

- Sec. 1. Wrecked property to be recovered by owners.
 2. Sheriffs, coroners and wreck-masters to take charge of wrecks.
 3. When wreck may be sold.
 4. Sale how to be made; proceeds to whom paid.
 5. Upon claim, order for wreck or its proceeds to be granted.
 6. Bond to be given previous to order.
 7. Where to be filed; when to be prosecuted.
 8. Owner may sue for property, although claim rejected.
 9. Person having wreck, to state claim for salvage.
 10. Duties of wreck-masters.
 11. Officers and citizens to aid them, when required.
 12. Officers, &c., entitled to salvage and expenses.
 13. Extent of salvage.
 14 & 15. If salvage, &c., not settled, appraisers to be appointed.
 16. Appraisers to be sworn; their powers; effect of their decision.
 17. Appraisers' fees and expenses, by whom paid.
 18. When wrecked property to be sold and proceeds paid into treasury.
 19. Last section to apply to proceeds of property sold.
 20. Notice of sale of wrecked property to be published in New-York.
 21. Officer having custody of wrecked property, to publish notice.
 22 & 23. Contents of notice; expense of publishing how defrayed.
 24. Penalty on officers violating provisions of this Title.
 25. Penalty on persons for not delivering to officers.
 26. Punishment for defacing marks, &c., or destroying invoices, &c.
 27. Officers to complain of offenders to grand jury.

§ 1. No ship, vessel, or boat, nor any goods, wares, and merchandize, that shall be cast by the sea upon the land, shall be deemed to belong to the people of this state, as wrecked property, but may be recovered by the owner, consignee, or person having the charge thereof, at the time of the happening

Owners, &c., of wrecked property to recover same.

TITLE 12.

of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage, and necessary expenses.

This Title is founded upon the act at p. 68, 1 R. L., from which it differs essentially in the details; 7 N. Y., 558; 7 B., 116; 3 B., 207.

Powers and duties of sheriffs, coroners and wreck-masters.

§ 2. The sheriff, coroners and wreck-masters of every county in which any wrecked property shall be found, when no owner, or other person entitled to the possession of such property, shall appear, shall severally have power, and it shall be their duty, to pursue all necessary measures for saving and securing such property; to take possession thereof, in whose hands soever the same may be, in the name of the people of this state; to cause the value thereof to be appraised by indifferent persons; and to keep the same in some safe place, to answer the claims of such persons as may thereafter appear entitled thereto.

Proceedings for sale of wreck.

§ 3. If the property so saved shall be in a perishable state, so as to render the sale thereof expedient, it shall be the duty of the officer in whose custody the same shall be, to apply to the first judge of the county, by a petition supported by an affidavit of the facts, for an order authorising such sale; and if the judge to whom such application shall be made; shall be satisfied that a sale of the property would be most beneficial to the parties interested, it shall be his duty to make the order so applied for.

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Sale; proceeds how disposed of

§ 4. If such order be made, the officer having custody of the property directed to be sold, shall sell the same at public auction, at the time and in the manner that shall be specified in the order, and the proceeds of such sale, deducting the expenses thereof, as the same shall be settled and allowed by the judge making the order, shall be paid to the treasurer of the county in which the property shall have been found.

Order for wreck or proceeds to claimant within one year.

§ 5. If within a year after such wrecked property shall have been found and saved, any person shall claim the same or the proceeds thereof, as owner or consignee, or as the agent of the owner or consignee, and shall establish his claim by evidence, which the first judge of the county shall deem to be satisfactory, it shall be the duty of such judge to make an order directing the officer, in whose possession such property or the proceeds thereof shall be, to deliver or pay the same to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of such property.

Bond to be given.

Its condition.

§ 6. No such order shall however be made, unless the claimant shall deliver to such judge a bond, with one or more sufficient sureties to be approved of by the judge, conditioned for the payment of all damages that may be recovered against such claimant or his representatives, within two years after the date of such bond, by any person establishing his title as owner of the property, or proceeds, to be delivered. The

TITLE 12.

bond shall be taken in the name of the people of this state, and the penalty shall be double the value of the property or proceeds before mentioned.

Its penalty.

§ 7. The bond shall be filed in the clerk's office of the county in which it shall be taken. If it shall become forfeited, it shall be the duty of the first judge of such county, upon the application, supported by due proof, of the person entitled to the damages mentioned in the condition of the bond, to make an order for the prosecution thereof, for the benefit of such person and at his risk and expense.

To be filed;
when prosecuted.

§ 8. The rejection by the judge, to whom it may be exhibited, of any claim for wrecked property, shall not preclude the claimant from maintaining a suit for the recovery of such property or its proceeds, against the officer in whose hands the same shall be; but if the plaintiff in any such suit shall prevail, there shall be deducted, in addition to the salvage and expenses charged on the property, from the damages to be recovered, all the costs of the defendant in making his defence.

Owner may
sue, al-
though
claim
rejected.

§ 9. It shall be the duty of every officer to whom any order duly made, for the delivery of wrecked property, or the payment of its proceeds, shall be directed, to present to the claimant exhibiting such order, a written statement of the claims for salvage and expenses on such property and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided, and in all cases, after the payment or tender of the payment of such salvage and expenses, as agreed to, or adjusted, the officer, in whose custody such property or proceeds shall be, shall deliver or pay the same, according to the terms of the order, directed to him.

Claim for
salvage to
be in writ-
ing.

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On being
paid, prop-
erty, &c.,
to be deliv-
ered.

§ 10. It shall be the duty of the wreck-masters, in the several counties, in which they shall be appointed, to give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and to use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandize which may be cast by the sea upon the land; and in the performance of these duties they shall employ such and so many men as they may respectively think proper.

Duties of
wreck-
masters.

8 B. 205.

§ 11. It shall be the duty of all magistrates, constables and citizens to aid and assist the wreck-masters, when required in the discharge of their duties.

Officers and
citizens to
aid them.

§ 12. All sheriffs, coroners and wreck-masters, and all persons employed by them, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage, for their services, and to all expenses incurred by them, in the performance of such services, out of the property saved, and

Officers,
&c., entit-
led to sal-
vage, &c.,
until paid,
wreck may
be de-
tained.

TITLE 12.

the officer having the custody of such property shall detain the same, until such salvage and expenses shall be paid.

3 B., 208.

Extent of salvage, &c.

§ 13. The whole salvage that shall be claimed in any case shall not exceed one half of the value of the property or proceeds on which such salvage shall be charged, and every agreement, order or adjustment allowing a greater salvage shall be void.

Proceedings to ascertain salvage, &c., if disputed.

§ 14. If in any case, the amount of salvage and expenses on property saved, shall not be settled by the agreement of the parties, the owner or consignee of such property, or the master or supercargo having charge thereof at the time the same was wrecked, or a claimant having an order for its delivery, may apply to any one of the judges of the county court of the county in which such property shall be, for the appointment of suitable persons as appraisers, to adjust and settle the amount of such salvage and expenses.

Id.

§ 15. It shall be the duty of the judge to whom such application shall be made, by an order under his hand and seal, to appoint three disinterested freeholders of the county, not inhabitants of the town in which the property shall have been saved, to adjust and settle such salvage and expenses.

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Appraisers to be sworn.

§ 16. The persons so appointed, before they shall enter on the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust, before any officer authorised to administer oaths. They shall have power to issue compulsory process for the attendance of witnesses, and to administer oaths to all witnesses who shall attend or be produced; and their decision, or that of any two of them under their hands, as to the amount of salvage and expenses that ought to be paid, and the sums to be paid to each person entitled to share in such salvage, or claiming such expenses, shall be final and conclusive.

Their powers.

Effect of their decision.

Fees and expenses, by whom to be paid.

§ 17. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge on the property saved. Each appraiser shall be entitled to two dollars for each day's necessary attendance, and to a sum not exceeding one dollar for his daily expenses.

When wrecked property to be sold;

§ 18. If within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if within three months after a claim shall have been preferred, the salvage and expenses on such property shall not have been paid, or a suit for the recovery of the property have been commenced, it shall be the duty of the officer in whose custody such property shall be, to sell the same at public auction, and to pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this state, for the benefit of the parties interested; but in no case shall any deduction of salvage and expenses be made, unless the amount thereof shall have been settled upon due proof, by an order

Proceeds to be paid into treasury; deductions for salvage &c.

of the first judge of the county in which the property shall have been saved, a copy of which order and of the evidence in support thereof, shall be transmitted by the judge making it, to the comptroller.

§ 19. The provisions of the preceding section shall be construed to apply to the proceeds of wrecked property, so far as relates to the time and manner of settling the salvage and expenses chargeable thereon. The balance of such proceeds, after the salvage and expenses, as settled, shall have been deducted, shall be paid by the county treasurer into the treasury of this state.

Last section to apply to proceeds of property sold.

§ 20. Public notice of every sale to be made of wrecked property, under the provisions of this Title, shall be published by the officer making the sale, for at least two weeks in succession in one or more of the newspapers printed in the city of New-York. Every such notice shall state the time and place of the sale, and shall contain a particular description of the property intended to be sold.

Notices of sales, when to be published.

§ 21. Every sheriff, coroner, or wreck-master, into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties interested, for at least four weeks in succession, in one or more of the newspapers printed in the city of New-York.

Notice of wrecked property to be published. [§24]

§ 22. Every such notice shall contain a minute description of such wrecked property, and of every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each, and shall state where such wrecked property then is, and its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition.

Contents of notice.

§ 23. The expenses of publishing every notice directed to be published in this Title, shall be charged on the property or proceeds to which such notice shall relate.

Expense, how paid.

§ 24. Every sheriff, coroner, wreck-master, or other officer, who shall detain in his hands any wrecked property or the proceeds thereof, after the salvage and expenses chargeable thereon shall have been agreed to or adjusted, and the amount thereof shall have been paid, or offered to be paid to him, or who shall be guilty of any fraud, embezzlement or extortion, in the discharge of his duties, or who shall, in any manner, violate the provisions of this Title, shall forfeit treble damages to the party injured, and shall be deemed guilty of a misdemeanor.

Penalties on officers for violations of this Title.

§ 25. Every person who shall take away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or who shall knowingly have in his possession any goods so taken or found, and shall not deliver the same to the sheriff, or one of the coroners or wreck-masters of the county where the same shall have been found, within forty-eight hours after the same shall have

Persons having wrecked property, to deliver same, &c.

TITLE II.
Penalty for
neglect.

been taken by him, or have come into his possession, shall forfeit treble the value of the goods so taken or kept by him, to the owner or consignee thereof, and shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

§ B., 207.

Defacing
marks, &c.

§ 26. Every person who shall deface or obliterate the marks on wrecked property, or in any manner disguise the appearance thereof, with intent to prevent the owner from discovering its identity, and every person who shall destroy or suppress any invoice, bill of lading, or other document, tending to show the ownership of wrecked property, shall be deemed guilty of a misdemeanor, punishable by fine and imprisonment, the fine not to exceed two thousand dollars, the imprisonment, three years.

Offenders to
be present
ed to grand
jury.

§ 27. It shall be the duty of all judges, sheriffs, justices of the peace, coroners, constables and wreck-masters, to present all offences and offenders against the provisions of this Title, that shall come to their knowledge, within their respective counties, to the grand jury, at the next court of general sessions therein.

See Laws of 1848, ch. 343.

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TITLE XIII.

OF THE LAW OF THE ROAD, AND THE REGULATION OF PUBLIC STAGES.

- SMO. 1. Persons in carriages meeting on any road, to turn to the right.
2. Penalty on owners of stages, &c. employing drivers addicted to drunkenness.
3. Owner when to discharge driver.
4. Punishment for running horses drawing any carriage.
5. Penalty on drivers for leaving horses without being tied.
6. Owners liable for acts of drivers, negligent or otherwise.
7. Meaning of term "carriage," as used in this Title.
8. Laws of cities, &c. concerning hackney coaches, not to be affected.

Carriages
meeting on
roads to
turn to the
right.

§ 1. Whenever any persons travelling with any carriages, shall meet on any turnpike road or public highway in this state, the persons so meeting shall seasonably turn their carriages to the right of the centre of the road, so as to permit such carriages to pass without interference or interruption, under the penalty of five dollars for every neglect or offence, to be recovered by the party injured.

2 R. L., 283, § 41; 227, § 6; 16 N. Y., 382; 12 B., 615; 7 W., 185.

Drivers ad-
dicted to
drunken-
ness, not to
be em-
ployed.

§ 2. No person owning any carriage running or travelling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage, who is addicted to drunkenness, or to the excessive use of spirituous liquor; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment, to be

sued for by the district attorney of the county in which such owner shall reside. The penalty, when recovered, shall be for the use of the poor of such county, except that the court in which the recovery shall be had, may allow a portion of said penalty, not exceeding twenty-five dollars, to be retained by such district attorney, as a compensation for his services and expenses, beyond the taxable costs.

Laws of 1827, 229, § 1.

§ 3. If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his service, within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice, to be sued for and applied as directed in the last preceding section.

TITLE 12.
Penalty,
how col-
lected.
How ap-
plied.

Drivers,
when to be
discharged.

Penalty for
neglect.

§ 4. No person driving any carriage upon any turnpike road or public highway within this state, with or without passengers therein, shall run his horses, or cause or permit the same to run, upon any occasion or for any purpose whatever; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding sixty days, at the discretion of the court.

Running
horses in
any car-
riage, pro-
hibited.
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Laws of 1824, 347, § 2; of 1826, 254, § 6, 7 & 9.

§ 5. It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto, while passengers remain in the same, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit, for the use of the poor, the sum of twenty dollars, to be recovered by action to be commenced within six months. And unless the amount of such recovery be paid forthwith, an execution shall be immediately issued therefor.

Leaving
horses
without be-
ing tied,
&c.

§ 6. The owners of every carriage running or travelling upon any turnpike road or public highway, for the conveyance of passengers, shall be liable, jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owner or owners, as a driver, while driving such carriage, to any person, or to the property of any person; and that whether the act

Owners of
certain car-
riages liable
for acts of
drivers.

TITLE 14.

occasioning such injury or damage be wilful or negligent, or otherwise, in the same manner as such driver would be liable.

Laws of 1824, 347, § 1.

Term "carriage," defined.

§ 7. The term "carriage," as used in this Title, shall be construed to include stage-coaches, waggon, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of persons and goods, or of either of them.

Hackney coaches,

§ 8. Nothing contained in this Title, shall interfere with or affect any law concerning hackney coaches or carriages in any of the cities of this state, nor interfere with nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages.

Laws of 1826, 254, § 10.

See Laws of 1837, ch. 300, as to unclaimed baggage; Laws of 1855, ch. 528.

TITLE XIV.

OF THE FIRING OF WOODS.

SEC. 1. Penalties for negligently setting fire to woods, or suffering it to extend.

2. When woods on fire, certain officers to order inhabitants to assist.

3. Penalty for refusal or neglect to obey order.

4. Sums recovered as penalties, shall be applied as rewards, &c.

Punishment for negligence in firing woods, &c.

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§ 1. Every person negligently setting fire to his own woods, or negligently suffering a fire kindled upon his own wood or fallow land, to extend beyond his own land, shall forfeit treble damages to the party injured thereby. Every person so offending shall also be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court; such fine not to exceed one thousand dollars, and such imprisonment not to exceed one year.

1 D., 207.

By whom inhabitants ordered to assist in extinguishing fire.

§ 2. Whenever the woods in any town shall be on fire, it shall be the duty of the justices of the peace, the supervisor and the commissioners of highways of such town, and of each of them, to order such and so many of the inhabitants of such town liable to work on the highways, and residing in the vicinity of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same, or in stopping its progress.

Penalty for neglect.

§ 3. If any person so ordered to repair to and assist, in manner aforesaid, shall refuse or neglect to comply with any such order, he shall forfeit and pay the sum of fifty dollars, and shall also be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, at the discretion of the court; such fine not to exceed one hundred dollars, and such imprisonment not to exceed sixty days.

Shall be given as rewards, &c.

§ 4. Every forfeiture recovered under the last section, shall

be applied as a reward to such person or persons as the officers above mentioned, or a majority of them, shall deem best entitled thereto, for superior exertions in extinguishing or stopping the progress of such fire.

TITLE XV.

OF THE EMBEZZLEMENT OF TIMBER FLOATING.

- Sec. 1. Owners of logs, &c., drifted on shore, may take them.
 2 & 3. In case of dispute, damages to be determined by fence-viewers.
 4. If drifted lumber not removed within 3 months, notice to be given.
 5. To be filed, and exhibited to all persons.
 6. Lumber to be detained until damages paid; how ascertained.
 7. If not claimed within six months, town clerk shall sell it.
 8. Fees of clerk on sale; application of proceeds.
 9. Damages to be assessed before payment by clerk.
 10. Punishment for defacing marks, or putting false marks on lumber.
 11. Penalty for converting lumber in certain situations.
 12. Marks on timber in Hudson river, to be recorded.
 13. Consequence of neglecting to record mark.
 14. Effect of entry or copy, as evidence.
 15. Penalty for drawing to shore, timber floating.
 16. Persons may be appointed to take charge of floating timber.
 17. Description of lumber to be filed; when and how to be sold.
 18. Application of proceeds of sale; owner entitled to surplus.
 19. Rejection of claim conclusive, unless suit be brought in six months.
 20. If not claimed, or suit not brought, proceeds to belong to city.
 21. This Title not to extend to drift wood.

§ 1. Whenever any logs, timber, boards or plank in rafts or otherwise, shall have been drifted upon any island in any of the waters within this state, or upon the bank or shore of any such waters, the owner of such logs or other lumber, may take the same away, on his first paying or tendering to the owner or possessor of the land on which the same shall have been drifted, the amount of the damages which such owner or possessor shall have sustained by reason thereof, and which may accrue in the removal of such logs or other lumber.

2 R. L., 236, § 3; Laws of 1825, 280, § 2.

§ 2. If the parties cannot agree as to the amount of such damages, either party may apply to any two of the fence-viewers of the town or city in which such lumber may be found, whose duty it shall be, after hearing the proofs and allegations of the parties, to determine the same, at the expense of the owner of the lumber, and their decision shall be conclusive.

§ 3. The fence-viewers, or either of them, shall have power to issue process for such witnesses as may be desired by either party, and to administer oaths to all witnesses produced before them.

§ 4. If the owner of such lumber shall not, within three months from and after the time when such lumber shall have been so drifted, take the same away, it shall be the duty of the owner or possessor of the land on which the same may have been drifted, to deliver to the clerk of such city or town,

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 When owners of drifted logs, &c., may take them.

Damages when ascertained by fence-viewers.

Powers of fence-viewers.

Notice of drifted lumber, when to be given to town clerk.

ARTICLE 14.

a note in writing, signed by him, describing as near as may be, such lumber, together with the quantity and mark or marks thereof, and the place where the same is lodged.

2 R. L., 236, § 4, 5, 6 & 7.

To be filed,
&c.

§ 5. It shall be the duty of the clerk, to whom any such note in writing shall be delivered, to file the same in his office, and to produce the same for the inspection of any person who shall request it.

Lumber to
be detained,
&c.

§ 6. The person delivering such note in writing, may detain the lumber described therein, until the owner thereof shall appear and pay the damages, if any, which such person shall be entitled to demand; which damages shall be settled, in case of disagreement between the parties, by the fence-viewers, in the same manner as above provided.

To be sold
if not
claimed in
six months.

§ 7. If no person shall, within six months after the filing of such note in writing, claim the lumber described therein, it shall be the duty of the owner or possessor of the land whereon the same shall have been drifted, to give notice thereof in writing, to the clerk of the city, or town, who shall cause such lumber to be sold by public auction, after giving at least twenty days' previous notice of such sale, by advertisement, to be posted up in at least three of the most public places in such city, or town.

Fees on
sale.

(899)

§ 8. The clerk making the sale, shall be entitled to the same fees therefor, as are allowed to officers making sales on executions issued out of justices' courts. The monies arising from the sale, shall be applied,

1. To the payment of such fees: and,
2. To the payment of the damages, which the owner or possessor of the land shall have sustained by reason of such lumber, and which may accrue in the removal thereof:

Proceeds,
how ap-
plied.

3. The surplus, if any, shall be paid by the clerk of the city, or town, to the treasurer of the county, wherein such lumber shall have been found, for the use of the poor.

2 R. L., 236, § 4, 5, 6 & 7.

Damages to
be assessed
before pay-
ment.

§ 9. Before the clerk shall pay out any of said monies, for the damages of the owner or possessor of the land, such damages shall be assessed by any two fence viewers of the city or town, and a specification thereof, signed by such fence-viewers, shall be filed in the office of such clerk.

Defacing
and forging
marks in
certain
lumber.

§ 10. No person shall cut out, alter, or deface any mark, made upon any logs, timber, boards, or plank, or put a false mark upon any such logs or other lumber, floating in any of the waters of this state, or lying on the banks or shores of any such waters, or at any saw-mill, or on any island where the same may have drifted; and whoever shall violate the provisions of this section, shall, for every offence, forfeit to the owner of such logs or other lumber, the sum of twenty-five dollars, and shall also be deemed guilty of a misdemeanor,

and on conviction, shall be imprisoned not exceeding six months, at the discretion of the court.

§ 11. Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards, or plank, floating in any of the waters of this state, or lying on the banks or shores of any such waters, or on any island where the same may have drifted, shall, for every offence, forfeit to the owner of such logs, or other lumber, treble damages.

Converting
lumber
floating, &c.

§ 12. Every person who shall put any logs or timber into the waters of the Hudson river, or of its branches, to the northwest of Baker's falls, for rafting or floating down said river, or its branches, shall select some mark, different from any mark previously recorded, and put the same in a conspicuous place, upon each log, or stick of timber, so put into said river, or its branches, and shall cause his mark to be recorded by the town clerk of the town of Queensbury, whose duty it shall be to enter the same in a book, to be kept by him for that purpose, which shall be subject to the inspection of any person requiring it.

Marks to
be put on
timber in
certain
places.

To be re-
corded in
Queens-
bury.

§ 13. Every such person, who shall neglect to enter his mark as required in the foregoing section, shall be debarred from all the benefits arising from the due entry of such mark; and the assignee or vendee of any such logs or timber, shall be subject to the same regulations and restrictions.

Conse-
quence of
neglect.

[700]

§ 14. The clerk of the town of Queensbury shall be entitled to a compensation of twenty-five cents for entering every such mark, to be paid by the person requesting the same to be entered; and a copy of such entry, certified by such clerk, shall be received as presumptive evidence, in all courts in this state, that the lumber having such mark, is the property of the person by whom such mark was selected and recorded.

Fees.

Entry, evi-
dence, &c.

§ 15. No person, not authorised as herein after directed, shall stop, take up, draw to, or lodge on the shore of Hudson river, or on any island therein, north of the south boundary line of the city of Albany, on either shore of said river, any logs, timber, boards, or plank floating in said river, without the consent of the owner thereof; and every person offending in the premises, shall, for every such offence, forfeit the sum of ten dollars, to be recovered by the overseers of the poor of the city or town where the offence was committed, for the use of the poor thereof.

Penalty for
drawing
timber, &c.,
floating, to
shore, &c.

2 R. L., 235, § 1.

§ 16. The common council of the city of Albany may, from time to time, appoint one or more persons resident therein, to take into possession any such logs, timber, boards, or plank, for the benefit of the owner thereof, in case such owner shall not reside in said city, or shall have no agent there, or shall be unknown. The persons so appointed shall proceed in the execution of their duties in such manner, and shall receive

Persons in
Albany to
be appoint-
ed to take
care of
timber, &c.

TITLE XV.

When and
how to be
sold, &c.

such compensation, as the said common council shall prescribe; but such compensation, in case of dispute, shall be settled by any two fence-viewers of the city.

§ 17. If the owner of such lumber shall not, within three months from and after the time when such lumber shall have been taken into possession by the persons so appointed, take the same away, it shall be the duty of the persons so appointed, to deliver to the clerk of the city of Albany, a description of such lumber, in the manner prescribed in the fourth section of this Title; and in case no owner shall claim the same, within six months after filing such note in writing, it shall be the duty of the common council of said city, to direct a sale to be made thereof, by the clerk of said city, who shall give notice in the manner, and be entitled to the compensation above provided.

Proceeds of
sale, how
applied.

§ 18. The monies arising from the sale, shall be first applied to the payment of the charges of sale, and the compensation of the persons by whom such lumber shall have been taken into possession: and the residue shall be paid to the chamberlain of said city; and the owner, or his representatives or assigns, shall, at any time within twelve months thereafter, be entitled to demand and receive such residuary monies from the chamberlain of said city, on producing to the common council of said city, satisfactory proof of ownership.

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Suit when
to be
brought.

§ 19. The rejection of any such claim by the common council, shall be conclusive against the right of the claimant, unless within six months after such rejection, he shall commence his action for such residuary monies, against the chamberlain of said city.

When city
to retain
proceeds.

§ 20. If no person shall claim such monies within twelve months after the payment thereof to the chamberlain, or if such claim be made and rejected, and no suit be brought as above provided, or no recovery had therein against the chamberlain, such monies shall remain for the use of the city of Albany.

Drift wood.

§ 21. Nothing contained in this Title shall be construed to extend to that kind of lumber called drift-wood.

2 R. L., 235, § 5.

TITLE XVI.**OF THE PRESERVATION OF DEER AND CERTAIN GAME AND ANIMALS.**

[By subdivision 18 of Section 4, of Chapter 194, of Laws of 1849, all Laws relating to preserving or destroying, killing or taking wild beasts or birds were repealed.]

See Laws of 1857, ch. 287.

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TITLE XVII.**OF DOGS.**

SEC. 1. Tax upon dogs in every county except New-York.

2. Duty of assessors to make lists of owners of dogs, &c.

- SEC. 3. Owner of dog to deliver description on demand.
4. Tax, how collected; to whom to be paid.
 5. Duty of collector; his authority and liability.
 6. Dog may be killed, after neglect to pay tax.
 7. Commissions to collector.
 8. Application of monies collected by tax.
 9. Owner of dog killing, &c. sheep, liable for damages.
 10. Damages from injuries to sheep, how ascertained.
 11. Certificate of fence-viewer, how far evidence.
 12. Application for damages to supervisor.
 13. When board to order payment; from what fund to be paid.
 14. Owner to refund amount, if subsequently recovered by him.
 15. Dogs chasing, &c. sheep, may be killed.
 16. Penalty on owner of dog for not killing it.
 17. When owner of dog may be ordered to kill it.
 18. Penalty for disobeying such order.
 19. Supervisor bound to prosecute for penalties.
 20. Who to be deemed owners of dogs.

§ 1. In all the counties of this state, except the county of New-York, there shall be annually levied and collected the following tax upon dogs; upon every bitch of three months old or upwards, kept by any one person or family, two dollars; upon every additional bitch kept by the same person or family, five dollars; upon two dogs, of six months old or upwards, other than bitches, kept by one person or family, one dollar; upon every such dog more than two kept by the same person or family, three dollars.

Tax on dogs, except in New York.

Laws of 1826, 149, § 1, 2, 3, 5 & 7.

§ 2. The assessors of any town, at the time of making their annual assessments, shall inquire and ascertain the number of dogs liable to be taxed; and shall enter in lists to be made by them, the name of every person in their respective towns, then owning or keeping any dog, subject to the above tax, the number kept by such person, and the whole amount of the tax to be paid by him.

Duty of assessors.

§ 3. The owner or possessor of every dog liable to the above tax, shall, whenever required by any assessor, deliver to him a description in writing of every such dog, owned or possessed by him. For every neglect or refusal so to do, and for every false statement, made in any description so furnished, he shall forfeit five dollars, to be recovered by the supervisor of the town.

Owner to deliver description.

§ 4. The assessors of every town shall within the time required by law for the completion of their assessment rolls of real and personal property, make out a duplicate of the lists so by them made, containing the names of the owners and possessors of dogs liable to taxation, with the amount payable by each person, and annex thereto a direction to the collector of the town, to levy, raise and collect the several sums in such lists specified, of the persons respectively, opposite to whose name the said sums shall be set, according to law, and pay over the same, after deducting his legal com-

Tax how collected; to whom to be paid.

[704]

TITLE IV.

missions, to the county treasurer; which shall be signed by them and be immediately delivered to the town collector.

See Laws of 1835, ch. 117.

Duty of collector, proceedings, liability.

§ 5. The collector to whom such list shall be delivered, shall proceed and collect the sums of money therein specified, within sixty days from the time of such delivery, in the same manner and with the like authority, in all respects, as in the collection of taxes imposed by the supervisors of the county, and shall pay the same to the county treasurer, after deducting the commissions allowed by law; and the same remedies to compel such collection and the payment over of the monies collected, may be had against such collectors and their sureties, as in the case of taxes levied by supervisors.

When dog may be killed.

§ 6. If any person duly assessed shall refuse or neglect to pay the tax so assessed, for five days after demand thereof, it shall be lawful for any person to kill the dog so taxed.

Collector's fee.

§ 7. The collectors shall be allowed to retain a commission of five dollars upon the hundred dollars, and at that rate upon all sums collected by them, pursuant to the directions of the assessors.

Tax how applied.

§ 8. The monies so collected and paid to any county treasurer, shall constitute a fund for the satisfying such damages as may arise in any year from dogs killing or injuring sheep in such county, and the residue for the use of the poor of the county.

Liability of owners of dogs for injuries.

§ 9. The owner or possessor of any dog that shall kill or wound any sheep or lamb, shall be liable for the value of such sheep or lamb to the owner thereof, without proving notice to the owner or possessor of such dog, or knowledge by him. that his dog was mischievous or disposed to kill sheep.

1 R. L., 169, § 1, and act of 1826, 149, § 6; 17 W., 562; 30 B., 155; 21 B., 333; 1 D., 495; 4 Cow., 351.

Fence-viewers to ascertain damage by injuries to sheep.

§ 10. The owner of any sheep or lambs that may be killed or injured by any dog, may apply to any two fence-viewers of the town, who shall inquire into the matter, and view the sheep injured or killed, and may examine witnesses in relation thereto, for which purpose either of them shall have power to administer oaths. If they are satisfied that the same were killed or hurt only by dogs, and in no other way, they shall certify such fact, the number of the sheep killed or hurt, and the amount of the damages sustained thereby by the owner, together with the value of the sheep hurt or killed.

Laws of 1826, 149, § 5 & 6.

(705)
Their certificate evidence.

§ 11. The said certificate shall be presumptive evidence of the facts therein contained, in any suit that may be brought by the party injured against the owner or possessor of any dog. It shall appear on the trial of such suit that due notice was given to the owner of the dog of the intended application to the fence-viewers.

Applications for damages.

§ 12. If the party injured can not discover the owner or

possessor of the dogs by which such damage was done, or shall fail to recover the value of the sheep killed or injured, against such owner or possessor, he may apply to the supervisor of the town, and upon producing to him the certificate of the fence-viewers, made as aforesaid, and his own affidavit that he has not been able to discover such owner or possessor, or that he has failed to recover his damages from such owner or possessor, the said supervisor shall lay the same before the board of supervisors of the county at their next meeting.

§ 13. The board of supervisors shall issue their order on the county treasurer, for the amount of the damages appearing by the certificate of the fence-viewers, to have been sustained by the owner of any sheep killed or injured by dogs, where they shall be satisfied that the owner or possessor of such dogs can not be discovered, or that the party injured has failed to recover such damages of such owner or possessor; which shall be paid by the county treasurer, from the fund constituted by the eighth section of this Title, and from no other monies.

Payment,
when to be
ordered.

From what
fund to be
made.

§ 14. If after receiving the amount of such damages from the county treasurer, the owner of the sheep so killed or injured shall recover the value thereof, or any part of such value, from the owner or possessor of any dog, he shall refund and repay to the county treasurer the sum so received from him, for which it shall be the duty of the supervisor of the town to bring an action against such owner, in case of his refusal, in the name of the county treasurer, and to pay into the county treasury the sum so collected.

If damages
recovered
subsequent-
ly to be
refunded.

§ 15. Any person may kill any dog which he shall see chasing, worrying or wounding any sheep, unless the same shall be done by the direction or permission of the owner of the sheep, or his servant.

Dogs cha-
sing, &c.,
sheep, to be
killed.

1 R. L., 169, § 1 & 7; 4 Cow., 351.

§ 16. The owner or possessor of every dog, to whom notice shall be given of any injury done by his dog to any sheep, or of his dog having chased or worried any sheep, shall within forty-eight hours after such notice, cause such dog to be killed; for every neglect so to do, he shall forfeit two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter, until such dog shall be killed, unless it shall satisfactorily appear to the court before which a suit shall be brought for the recovery of the said penalties, that it was not in the power of such owner or possessor to kill such dog.

After no-
tice, &c.,
owner of
dog to kill
it.

[706]

§ 17. If any dog shall attack any person peaceably traveling on any highway, or any horse in a carriage, or upon which any person shall be mounted, and complaint thereof be made to a justice of the peace, such justice shall inquire into the complaint, and if satisfied of its truth, and that such dog is

When jus-
tice may or-
der owner
of dog to
kill it.

ART. 1.

dangerous, he shall order the owner or possessor of such dog to kill him immediately.

1 R. L., 169, § 2.

Penalty for neglect.

§ 18. The owner or possessor of any dog, who shall refuse or neglect to kill him within forty-eight hours after having received such order, shall forfeit the sum of two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter, until such dog be killed.

Supervisor to sue for penalties.

§ 19. Upon complaint being made to any supervisor of a town, of any penalties imposed by this Title having been incurred, he shall commence a suit, for the recovery thereof, in his name of office, and prosecute the same with due diligence; and the monies recovered shall be by him paid to the county treasurer, to be added to the fund herein before provided for the satisfaction of damages sustained by owners of sheep.

Who to be deemed owners of dogs.

§ 20. Every person in possession of any dog, or who shall suffer any dog to remain about his house for the space of twenty days, previous to the assessment of a tax, or previous to any injury, chasing or worrying of sheep, or any such attack made by a dog, shall be deemed the owner of such dog, for all the purposes of this Title.

Laws of 1826, 149, § 4; 1 D., 495.

See Laws of 1832, ch. 273; 1835, ch. 117; 1838, ch. 315; 1843, ch. 146; 1845, ch. 55.

TITLE XVIII.

OF THE DESTRUCTION OF WOLVES, AND OTHER NOXIOUS ANIMALS.

[By subdivision 13 of section 4 of ch. 194 of Laws of 1849, all laws for the preservation or destruction, killing or taking of wild beasts or birds, were repealed.]

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TITLE XIX.

OF BROKERAGE, STOCK-JOBING, AND PAWN-BROKERS.

ART. 1. — Regulations concerning brokers.

ART. 2. — Of stock-jobbing.

ART. 3. — Of pawn-brokers.

ARTICLE FIRST.

REGULATIONS CONCERNING BROKERS.

- SEC. 1.** Rate of brokage, &c. and fee for making bond, &c. prescribed.
2. Excess over rate, may be recovered back within one year.
3. If neglected for a year, overseers of poor may recover excess.
4. Persons liable to be sued, may be compelled to discover, &c.
5. Persons discovering and returning excess, exonerated from further penalty.

Rate of brokage, &c.

§ 1. No person shall, directly or indirectly, take or receive more than fifty cents for a brokage, soliciting, driving, or procuring the loan or forbearance of one hundred dollars for one year, and in that proportion for a greater or less sum; nor more than thirty-eight cents, for making or renewing any

Fee for making, &c., bond, &c.

bond, bill, note or other security given for such loan or forbearance, or for any counter bond, bill, note, or other security concerning the same.

The provisions of this Title, with some variations, are taken from 1 R. L., 68, § 3 & 4; 6 B., 178.

§ 2. Every person who shall pay, deliver, or deposit any money, property, or thing in action, over and above the rate aforesaid, and his personal representatives may, within one year after such payment, delivery or deposit, sue for and recover the same of the person so taking or receiving such money, property, or thing in action, or of his personal representatives.

Excess may be recovered back.

§ 3. In case such suit shall not be brought within the time above prescribed, in good faith, or in case it shall be discontinued, or wilfully delayed, then the overseers of the poor of the city or town where the offence was committed, may, within one year after such neglect, discontinuance, or delay, sue for and recover the money, property, or thing in action, so received, delivered, or deposited, from the person receiving the same, or his personal representatives, for the use of the poor of the county.

When overseers of poor may recover excess.

§ 4. Every person who shall be liable to be sued by virtue of the foregoing provisions, shall be obliged and compellable to answer upon oath, any bill that shall be preferred against him in the court of chancery, for discovering the money, property or thing in action so illegally received, and may be compelled by the decree of such court to return the same.

Discovery, &c., compelled.

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§ 5. Upon the discovery of the money, property, or other thing so illegally received, and the repayment and return thereof, with the payment of the costs of such suit, the person making such discovery and return shall be acquitted and discharged from any other punishment, forfeiture or penalty, which he may have incurred by reason of having so illegally received such money, property, or other thing so discovered and returned.

Discovery, &c., to exonerate from further penalty.

ARTICLE SECOND.

OF STOCK-JOBING.

Sec. 6, 7, 8, constituting the whole of this article repealed by Laws of 1858, ch. 184.

ARTICLE THIRD.

OF PAWNBROKERS.

SEC. 9. Pawnbroking for more than legal interest, unless licensed, prohibited.

10. When search warrant to issue for property pledged with pawnbroker.

11. Powers of constable in executing such warrant.

12. Property seized to be restored, or delivered to claimant on giving bond.

13. Penalty and condition of bond to be given by claimant.

[711]

§ 9. No person shall carry on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest

Pawnbroking prohibited.

TITLE 20.
except in
cities.

above that allowed by law, except in those cities where by their charters the corporations have the power of licensing such pawnbrokers. A violation of this provision shall be deemed a misdemeanor.

Search war-
rants for
property
pawned.

§ 10. Whenever any person shall make oath before any justice of the peace, police justice or assistant justice, that any property belonging to him has been embezzled or taken without his consent, and that he has reason to believe and suspect, and does suspect that such property has been pledged with any pawnbroker, such justice, if satisfied of the correctness of such suspicions, shall issue his warrant, directed to any constable of the city or place, commanding him to search for the property so alleged to have been embezzled or taken, and to seize and bring the same before such justice.

How to be
executed.

§ 11. The constable to whom any such warrant shall be directed and delivered, shall have the same power to execute the same, and shall proceed in the same manner as in the case of a search warrant issued upon a charge of larceny.

Property
seized, how
disposed of.

§ 12. Upon any property so seized by virtue of such warrant, being brought before the magistrate who issued the same, he shall cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as herein after directed; and if such bond be not executed within twenty-four hours, such justice shall cause the said property to be delivered to the person from whose possession it was taken.

Bond to be
given by
claimant.

§ 13. Such bond shall be in a penal sum equal to double the value of the property claimed, with such surety as the justice shall approve, to the person from whose possession the property was taken, with a condition that the person so claiming the same will on demand pay all damages that shall be recovered against him in any suit to be brought within thirty days from the date of such bond, by the pawnbroker from whose possession the said property was taken.

TITLE XX.

OF UNAUTHORISED BANKING, AND THE CIRCULATION OF CERTAIN NOTES OR EVIDENCES OF DEBT ISSUED BY BANKS.

- SEC. 1. Associations for certain banking purposes, prohibited.
2. Penalty for subscribing, becoming member or interested.
3. Unauthorized corporations prohibited from banking.
4. Penalty for violating last section.
5. Loans made contrary to former sections, void.
- 6 & 7. Penalty on unauthorised persons engaging in banking operations.
8. Circulation of bank bills under one dollar, prohibited.
9. Penalty, how and in what time to be sued for.
10. Bank bills payable otherwise than in money, not to be circulated.
11. Penalty, in what time and how to be sued for.
12. Bank bills receivable for debts, to be deemed promissory notes.
13. Penalties, how to be sued for and applied.

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Associa-
tions for

§ 1. No person unauthorised by law, shall subscribe to, or

become a member of, or be in any way interested in, any association, institution or company, formed, or to be formed, for the purpose of receiving deposits, making discounts or issuing notes or other evidences of debt, to be loaned or put in circulation as money; nor shall any person unauthorized by law, subscribe to or become in any way interested in, any bank or fund created, or to be created for the like purposes, or either of them.

2 R. L., 234, § 2; see Laws of 1837, ch. 20; 4 N. Y., 463; 17 B., 378; 9 W., 351; 4 W., 500; 3 W., 296, 583; 1 San. Ch., 280; 4 Ed., 170, 334; 4 H., 442; 19 J. R., 1; 14 J. R., 206.

§ 2. Whoever shall subscribe to or become a member in any such company, or interested in any such bank or fund, shall forfeit one thousand dollars. Penalty.

4 N. Y., 463.

§ 3. No incorporated company, without being authorised by law, shall employ any part of its effects, or be in any way interested in any fund that shall be employed, for the purpose of receiving deposits, making discounts or issuing notes or other evidences of debt, to be loaned or put into circulation as money. Prohibition of unauthorised corporations.

15 N. Y., 58; 12 N. Y., 505; 9 W., 392.

§ 4. Any director, or other agent or officer, of any incorporated company, who shall violate any provision of the last section, shall forfeit one thousand dollars. Penalty.

§ 5. All notes and other securities for the payment of any money or the delivery of any property, made or given to any such association, institution or company, that shall be formed for the purpose expressed in the first section of this Title, or made or given to secure the payment of any money loaned or discounted by any incorporated company or its officers, contrary to the provisions of the third section of this Title, shall be void. Notes, &c., on forbidden loans, void.

19 J. R., 5.

§ 6. No person, association of persons or body corporate, except such bodies corporate as are expressly authorised by law, shall keep any office for the purpose of receiving deposits, or discounting notes or bills, or issuing any evidences of debt, to be loaned, or put in circulation as money: nor shall they issue any bills or promissory notes or other evidences of debt as private bankers, for the purpose of loaning them, or putting them in circulation as money, unless thereto specially authorised by law. Persons unauthorised not to engage in certain banking operations.

Laws of 1818, 242, § 1 & 2; see Laws of 1837, ch. 20; 16 N. Y., 511; 15 N. Y., 58; 14 N. Y., 93; 4 N. Y., 479; 2 B. Ch., 301; 6 H., 217; 5 H., 490; 25 W., 648; 20 W., 390; 17 W., 170; 4 W., 498; 6 Cow., 293; 1 S. Ch., 280; Cl. Ch., 432; 2 J. C. R., 371.

§ 7. Every person and every corporation, and every member of a corporation, who shall contravene either of the Penalty.

TITLE 20.
certain
banking
purposes,
prohibited.

TITLE 20.

provisions in the last section, or, directly or indirectly, assent to such violation, shall forfeit one thousand dollars.

See Laws of 1837, ch. 20; 1 Hilt. 98; 2 B. Ch. 301.

[713]
Bank bills
under one
dollar not to
be circula-
ted.

§ 8. No person shall pay, give, or receive in payment, or in any way circulate, or attempt to circulate, any bank bill, or promissory note, check, draft, or other evidence of debt, issued by any banking company within this state, or elsewhere, which shall purport to be for the payment of a less sum of money than one dollar.

2 R. L., 235, § 2.

Penalty,
in what
time and
how to be
sued for.

§ 9. Whoever shall offend against any provision of the last section, shall forfeit the nominal amount of the bill, promissory note, check, draft, or other evidence of debt so given, paid, received, circulated, or attempted to be circulated, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence is committed, with their consent, and under their direction, in an action to be commenced within thirty days after the commission of the offence.

Bank bills
payable
otherwise
than in
money.

§ 10. No person shall give, pay, or receive in payment, or in any way circulate, or attempt to circulate, any bank bill, or any promissory note, bill, check, draft, or other evidence of debt, issued by any banking company whatever, which shall be made payable otherwise than in lawful money of the United States.

Laws of 1824, 303.

Penalty, in
what time,
and how to
be sued for.

§ 11. Every person offending against any provision of the last section, shall forfeit the nominal amount or value of such bill, note, or other evidence of debt so given, paid, received, circulated, or offered, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence shall be committed, with their consent and under their direction, in an action to be commenced, within sixty days after the commission of the offence.

Certain
bills de-
clared to be
promissory
notes.

§ 12. All bills, notes, or other instruments which shall be issued by any banking company, purporting to be receivable in payment of debts due to such company, shall be deemed and taken to be promissory notes for the payment, on demand, of the sum or value expressed in such instrument; and such sum shall be recoverable by the holder or bearer of such instrument, in like manner as if the same were a promissory note.

Laws of 1816-17, 12.

Penalties,
how to be
sued for and
applied.

§ 13. The penalties prescribed in this Title, where no other provision is made, shall be recovered by suits in the name of the people of this state, to be prosecuted by the district attorneys of the counties respectively where the offences may be committed. All penalties herein prescribed, when col-

lected, shall be paid to the county treasurer of the county, for the use of the poor thereof.

See Laws of 1830, ch. 295; 1837, ch. 20; 1830, ch. 243; 1833, ch. 315.

TITLE XXI.

(714)

OF INSURANCES ON PROPERTY IN THIS STATE MADE IN FOREIGN COUNTRIES, AND BY INDIVIDUALS AND ASSOCIATIONS UNAUTHORISED BY LAW.

- SEC. 1. Insurances by foreigners or their agents, prohibited.
2. Penalty, and application thereof.
 3. Premium to be paid by agents of companies of other states.
 4. Persons not to act as agents without giving bond.
 5. Penalty for making, &c., insurance, without having given bond.
 6. Penalties how collected and applied.

§ 1. No person, association, or company of persons, residing in any foreign country, and no incorporation established in a foreign country, nor any person in behalf of them or any of them, shall directly or indirectly make any contract of insurance, or by way of insurance, against loss or injury by fire, upon any house, building or goods, situated or being in this state.

Certain insurances by foreigners prohibited.

Laws of 1814, 52, ch. 49, §§ 1 & 2.

§ 2. Whoever shall offend against the foregoing provision, shall forfeit one thousand dollars, for the use of the poor of the county where such illegal contract shall be made.

Penalty.

§ 3. There shall be paid into the treasury of this state, on the first day of February in each year, by every person who shall act as agent for any individuals or associations of individuals not incorporated and authorised by the laws of this state to effect insurances against losses by fire, or against marine losses and risks, although such individuals or association may be incorporated for that purpose by any other state, or country, the sum of two dollars upon the hundred dollars, and at that rate upon the amount of all premiums, which, during the year ending on the preceding first day of September, shall have been received by such agent or any other person for him, or shall have been agreed to be paid, for any insurances effected, or agreed to be effected or procured by him as such agent against loss or injury by fire, or against marine losses and risks.

Premium to be paid by agents of certain insurance companies of other states.

Laws of 1824, 340; 1837, ch. 30.

§ 4. No person shall, as agent for any individuals or association, effect or agree to effect any insurances, upon which the duty above mentioned is required to be paid, or as agent or otherwise procure such insurance to be effected, until he shall have executed and delivered to the comptroller a bond to the people of this state, in the penal sum of one thousand dollars, with such sureties as the comptroller shall approve, with a condition that he will annually render to the comptroller, on the first day of February in each year, a just and

Bond to be given by agents.

TITLE 20.

provisions in the last section, or, directly or indirectly, assent to such violation, shall forfeit one thousand dollars.

See Laws of 1837, ch. 20; 1 Hilt., 98; 2 B. Ch., 301.

[713]
Bank bills
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be circula-
ted.

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2 R. L., 235, § 2.

Penalty,
in what
time and
how to be
sued for.

§ 9. Whoever shall offend against any provision of the last section, shall forfeit the nominal amount of the bill, promissory note, check, draft, or other evidence of debt so given, paid, received, circulated, or attempted to be circulated, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence is committed, with their consent, and under their direction, in an action to be commenced within thirty days after the commission of the offence.

Bank bills
payable
otherwise
than in
money.

§ 10. No person shall give, pay, or receive in payment, or in any way circulate, or attempt to circulate, any bank bill, or any promissory note, bill, check, draft, or other evidence of debt, issued by any banking company whatever, which shall be made payable otherwise than in lawful money of the United States.

Laws of 1824, 303.

Penalty, in
what time,
and how to
be sued for.

§ 11. Every person offending against any provision of the last section, shall forfeit the nominal amount or value of such bill, note, or other evidence of debt so given, paid, received, circulated, or offered, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence shall be committed, with their consent and under their direction, in an action to be commenced, within sixty days after the commission of the offence.

Certain
bills de-
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§ 12. All bills, notes, or other instruments which shall be issued by any banking company, purporting to be receivable in payment of debts due to such company, shall be deemed and taken to be promissory notes for the payment, on demand, of the sum or value expressed in such instrument; and such sum shall be recoverable by the holder or bearer of such instrument, in like manner as if the same were a promissory note.

Laws of 1816-17, 12.

Penalties,
how to be
sued for and
applied.

§ 13. The penalties prescribed in this Title, where no other provision is made, shall be recovered by suits in the name of the people of this state, to be prosecuted by the district attorneys of the counties respectively where the offences may be committed. All penalties herein prescribed, when col-

lected, shall be paid to the county treasurer of the county, for the use of the poor thereof.

See Laws of 1830, ch. 295; 1837, ch. 20; 1830, ch. 243; 1833, ch. 315.

TITLE XXI.

(714)

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 5. Penalty for making, &c., insurance, without having given bond.
 6. Penalties how collected and applied.

§ 1. No person, association, or company of persons, residing in any foreign country, and no incorporation established in a foreign country, nor any person in behalf of them or any of them, shall directly or indirectly make any contract of insurance, or by way of insurance, against loss or injury by fire, upon any house, building or goods, situated or being in this state.

Certain insurances by foreigners prohibited.

Laws of 1814, 52, ch. 49, §§ 1 & 2.

§ 2. Whoever shall offend against the foregoing provision, shall forfeit one thousand dollars, for the use of the poor of the county where such illegal contract shall be made.

Penalty.

§ 3. There shall be paid into the treasury of this state, on the first day of February in each year, by every person who shall act as agent for any individuals or associations of individuals not incorporated and authorised by the laws of this state to effect insurances against losses by fire, or against marine losses and risks, although such individuals or association may be incorporated for that purpose by any other state, or country, the sum of two dollars upon the hundred dollars, and at that rate upon the amount of all premiums, which, during the year ending on the preceding first day of September, shall have been received by such agent or any other person for him, or shall have been agreed to be paid, for any insurances effected, or agreed to be effected or procured by him as such agent against loss or injury by fire, or against marine losses and risks.

Premium to be paid by agents of certain insurance companies of other states.

Laws of 1824, 340; 1837, ch. 30.

§ 4. No person shall, as agent for any individuals or association, effect or agree to effect any insurances, upon which the duty above mentioned is required to be paid, or as agent or otherwise procure such insurance to be effected, until he shall have executed and delivered to the comptroller a bond to the people of this state, in the penal sum of one thousand dollars, with such sureties as the comptroller shall approve, with a condition that he will annually render to the comptroller, on the first day of February in each year, a just and

Bond to be given by agents.

TITLE 20.

provisions in the last section, or, directly or indirectly, assent to such violation, shall forfeit one thousand dollars.

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[713]
Bank bills under one dollar not to be circulated.

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2 R. L., 235, § 2.

Penalty, in what time and how to be sued for.

§ 9. Whoever shall offend against any provision of the last section, shall forfeit the nominal amount of the bill, promissory note, check, draft, or other evidence of debt so given, paid, received, circulated, or attempted to be circulated, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence is committed, with their consent, and under their direction, in an action to be commenced within thirty days after the commission of the offence.

Bank bills payable otherwise than in money.

§ 10. No person shall give, pay, or receive in payment, or in any way circulate, or attempt to circulate, any bank bill, or any promissory note, bill, check, draft, or other evidence of debt, issued by any banking company whatever, which shall be made payable otherwise than in lawful money of the United States.

Laws of 1824, 303.

Penalty, in what time, and how to be sued for.

§ 11. Every person offending against any provision of the last section, shall forfeit the nominal amount or value of such bill, note, or other evidence of debt so given, paid, received, circulated, or offered, to any person who will sue for the same, in the name of the overseers of the poor of the town where the offence shall be committed, with their consent and under their direction, in an action to be commenced, within sixty days after the commission of the offence.

Certain bills declared to be promissory notes.

§ 12. All bills, notes, or other instruments which shall be issued by any banking company, purporting to be receivable in payment of debts due to such company, shall be deemed and taken to be promissory notes for the payment, on demand, of the sum or value expressed in such instrument; and such sum shall be recoverable by the holder or bearer of such instrument, in like manner as if the same were a promissory note.

Laws of 1816-17, 12.

Penalties, how to be sued for and applied.

§ 13. The penalties prescribed in this Title, where no other provision is made, shall be recovered by suits in the name of the people of this state, to be prosecuted by the district attorneys of the counties respectively where the offences may be committed. All penalties herein prescribed, when col-

lected, shall be paid to the county treasurer of the county, for the use of the poor thereof.

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Certain insurances by foreigners prohibited.

Laws of 1814, 52, ch. 49, §§ 1 & 2.

§ 2. Whoever shall offend against the foregoing provision, shall forfeit one thousand dollars, for the use of the poor of the county where such illegal contract shall be made.

Penalty.

§ 3. There shall be paid into the treasury of this state, on the first day of February in each year, by every person who shall act as agent for any individuals or associations of individuals not incorporated and authorised by the laws of this state to effect insurances against losses by fire, or against marine losses and risks, although such individuals or association may be incorporated for that purpose by any other state, or country, the sum of two dollars upon the hundred dollars, and at that rate upon the amount of all premiums, which, during the year ending on the preceding first day of September, shall have been received by such agent or any other person for him, or shall have been agreed to be paid, for any insurances effected, or agreed to be effected or procured by him as such agent against loss or injury by fire, or against marine losses and risks.

Premium to be paid by agents of certain insurance companies of other states.

Laws of 1824, 340; 1837, ch. 30.

§ 4. No person shall, as agent for any individuals or association, effect or agree to effect any insurances, upon which the duty above mentioned is required to be paid, or as agent or otherwise procure such insurance to be effected, until he shall have executed and delivered to the comptroller a bond to the people of this state, in the penal sum of one thousand dollars, with such sureties as the comptroller shall approve, with a condition that he will annually render to the comptroller, on the first day of February in each year, a just and

Bond to be given by agents.

TITLE XL

[715]

Its penalty
and condi-
tion.

true account of all premiums which, during the year ending on the first day of September preceding such report, shall have been received by him or by any other person for him, or agreed to be paid for any insurance against loss or injury by fire, which shall have been effected by him or agreed to be effected as such agent, or which shall have been procured by him from any individuals or association not authorised as aforesaid; and that he will annually, on the first day of February in each year, pay into the treasury of this state, two dollars upon the hundred dollars, and at that rate, upon the amount of such premiums.

Laws of 1824, 340; 1837, ch. 30.

Penalty.

§ 5. Every person who shall effect, agree to effect, or procure any insurance specified in the preceding third section of this Title, without having executed and delivered such bond, shall forfeit five hundred dollars, for the use of the poor of the county where the offence shall be committed.

Penalties
how col-
lected and
applied.

§ 6. The penalties imposed in this Title shall be collected in the name of the people of this state, by the district attorney of the county where the offence shall be committed, for the use of the poor thereof.

See Laws of 1829, ch. 336; 1849, ch. 178; 1857, ch. 548; 1858, ch. 255.

[The preceding twenty Chapters, constituting the FIRST PART OF THE REVISED STATUTES, were finally passed as one Act, by the Senate and Assembly, on the 3d of December, 1827, and were on the same day approved and signed by DE WITT CLINTON, Governor of the State.]

REVISED STATUTES

[717]

OF THE

STATE OF NEW YORK.

PART II.

AN ACT concerning the acquisition, the enjoyment and the transmission of property, real and personal; the domestic relations, and other matters connected with private rights.

WHEREAS it is expedient that the several statutes of this state, relating to the acquisition, the enjoyment and the transmission of property, real and personal; the domestic relations, and certain matters connected with private rights; should be consolidated and arranged in appropriate chapters, titles and articles; that the language thereof should be simplified; and that omissions and other defects should be supplied and amended: Therefore

The People of the State of New-York, represented in Senate and Assembly, do declare and enact as follows:

CHAP. I.

Of Real Property, and of the Nature, Qualities and Alienation of Estates therein.

(Took effect January 1, 1880.)

TITLE 1.—Of the tenure of real property, and the persons capable of holding and conveying estates therein.

TITLE 2.—Of the nature and qualities of estates in real property, and the alienation thereof.

TITLE 1.

TITLE 3. — Of estates in dower.

TITLE 4. — Of estates for years, and at will, and the rights and duties of landlords and tenants.

TITLE 5. — Miscellaneous provisions of a general nature.

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TITLE I.

OF THE TENURE OF REAL PROPERTY, AND THE PERSONS CAPABLE OF HOLDING AND CONVEYING ESTATES THEREIN.

ART. 1. — Of the tenure of real property.

ART. 2. — Of the persons capable of holding and conveying lands.

ARTICLE FIRST.

OF THE TENURE OF REAL PROPERTY.

SEC. 1. People of this state deemed original owners.

2. Escheated land to be held subject to trusts, &c.

3. Lands declared allodial; feudal tenures abolished.

4. Abolition of tenures not to affect certain rights, or powers of courts.

5. Guardianship of infants owning lands, to whom it belongs.

6. Provisions respecting guardians in soccage, to apply to them.

7. Superseded by appointment of other guardian.

The People,
original
owners of
lands in this
state.

§ 1. The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands, the title to which shall fail, from a defect of heirs, shall revert or escheat to the people.

1 R. L., 380, § 2; 9 N. Y., 319; 6 N. Y., 467; 15 B., 94; 8 B., 194; 25 W., 219; 17 W., 312.

To hold es-
cheated
land sub-
ject to
trusts,
&c.
How trusts,
&c., execu-
ted.

§ 2. All escheated lands, when held by the state, or its grantees, shall be subject to the same trusts, incumbrances, charges, rents, and services, to which they would have been subject, had they descended; and the court of chancery shall have power to direct the attorney-general to convey such lands to the parties equitably entitled thereto, according to their respective rights, or to such new trustee as may be appointed by such court.

27 B., 149.

All lands
allodial.

Feudal ten-
ures abo-
lished.

§ 3. All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates; and all feudal tenures, of every description, with all their incidents, are abolished.

1 R. L., 70, § 2 to 6; 6 N. Y., 467; 27 B., 149.

Certain
rights, &c.,
not to be
affected.

§ 4. The abolition of tenures shall not take away or discharge, any rents or services certain, which at any time heretofore, have been, or hereafter may be, created or reserved; nor shall it be construed to affect or change the powers or jurisdiction of any court of justice in this state.

27 B., 149.

Who to be
guardians

§ 5. Where an estate in lands shall become vested in an

infant, the guardianship of such infant, with the rights, powers and duties of a guardian in soccage, shall belong,

ART. 2
of infants
owning
lands.

1. To the father of the infant,

2. If there be no father, to the mother;

3. If there be no father or mother, to the nearest and eldest relative of full age, not being under any legal incapacity; and as between relatives of the same degree of consanguinity, males shall be preferred.

31 B., 289; 30 B., 635; 7 Cow., 38; 5 Pai., 41; 15 W., 633.

§ 6. To every such guardian, all statutory provisions that are or shall be in force, relative to guardians in soccage, shall be deemed to apply.

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Subject to
certain
laws.

30 B., 635.

§ 7. The rights and authority of every such guardian shall be superseded, in all cases where a testamentary or other guardian shall have been appointed under the provisions of the third Title of the eighth Chapter of this act.

When su-
perseded.

ARTICLE SECOND.

OF THE PERSONS CAPABLE OF HOLDING AND CONVEYING LANDS.

SEC. 8. Citizens of U. States capable of holding, &c. lands in this state.

9. Titles of possessors at certain time, not to be affected by alienism.

10. Who capable of aliening lands.

11. Purchases from Indians void, &c.

12. Indians cannot dispose of or contract for, &c. land, except, &c.

13. Heirs of certain Indian patentees, may convey.

14. Occupants of lands so conveyed to be paid for improvements.

15. Resident aliens may make certain deposition.

16. Right thereafter to hold lands and make dispositions of them.

17. Not to hold lands acquired previous.

18. If alien die, his heirs may inherit lands.

19. Aliens may take mortgages on sales of lands.

20. Liabilities and incapacities of aliens holding lands.

§ 8. Every citizen of the United States is capable of holding lands within this state, and of taking the same by descent, devise or purchase.

Who capa-
ble to hold
lands.

§ 9. No title or claim of any citizen of this state, who was in the actual possession of lands on the twenty-first day of April, one thousand eight hundred and twenty-five, or at any time before, shall be defeated or prejudiced on account of the alienism of any person through or from whom his title or claim to such lands may have been derived.

Certain ti-
tles not to
be affected
by alienism.

§ 10. Every person capable of holding lands, (except idiots, persons of unsound mind, and infants,) seised of, or entitled to, any estate or interest in lands, may alien such estate or interest at his pleasure, with the effect, and subject to the restrictions and regulations provided by law.

Who capa-
ble of alien-
ing lands.

1 R. L., 70, § 1, and 74, § 5; 6 N. Y., 467; 4 N. Y., 15; 21 B., 551; 13 B., 147; 12 How. P. R., 441; 26 W., 297.

§ 11. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand

Certain pur-
chases from
Indians,
void-

TITLE 1.

seven hundred and seventy-five, or which may hereafter be made, with the Indians in this state, is valid, unless made under the authority and with the consent of the legislature of this state.

20 J. R., 693.

Sales, &c.,
by Indians,
prohibited.

§ 12. No Indian residing within this state, can make any contract for or concerning the sale of any lands within this state, or in any manner give, sell, devise or otherwise dispose of any such lands, or any interest therein, without the authority and consent of the legislature of this state, except as herein after provided.

2 R. L., 153, § 1; 8 Cow., 190; see Laws of 1843, ch. 87; 1847, ch. 486; 1849, ch. 420.

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Heirs of
certain In-
dians may
convey, &c.

§ 13. The heirs of every Indian to whom land has been granted for military services rendered during the war of the revolution, shall be and are capable of taking and holding any such lands by descent, in the same manner as if such heirs were citizens of this state, at the death of their ancestors; and every conveyance executed by such patentee, or his heirs, after the seventh day of March, one thousand eight hundred and nine, to any citizen of this state, for any such land, shall be valid, if executed with the approbation of the surveyor-general of this state, to be expressed by an endorsement made on such conveyance and signed by him.

2 R. L., 175, § 55; 15 J. R., 264.

Improve-
ments to be
paid for.

§ 14. If any land so conveyed shall have been occupied or improved, at the time of such conveyance, the occupant, his heirs or assigns, shall be entitled to be paid for the improvements made by them, or either of them, in the manner provided in the second section of the act, entitled "An act concerning lands in the military tract," passed April 8, 1813.

Resident
aliens may
make depo-
sition, &c.,
to be filed,
&c., by se-
cretary of
state.

§ 15. Any alien who has come, or who may hereafter come into the United States may make a deposition or affirmation in writing, before any officer authorised to take the proof of deeds to be recorded, that he is a resident in this state, and intends always to reside in the United States, and to become a citizen thereof, as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require, to enable him to obtain naturalization; which shall be certified by such officer, and be filed and recorded by the secretary of state, in a book to be kept by him for that purpose. And such certificate, or a certified copy thereof, shall be evidence of the facts therein contained.

Laws of 1825, 427, § 1, 2 & 3; 1834, ch. 272; 20 N. Y., 320; 1 Ed., 512; 10 W., 379.

Entitled
thereafter
to hold
lands;
may dispose
of them,
but not to
lease.

§ 16. Any alien who shall make and file such deposition, shall thereupon be authorised and enabled to take and hold lands and real estate, of any kind whatsoever, to him, his heirs and assigns forever, and may, during six years thereafter, sell, assign, mortgage, devise and dispose of the same, in any

manner, as he might or could do if he were a native citizen of this state, or of the United States, except that no such alien shall have power to lease or demise any real estate, which he may take or hold by virtue of this provision, until he becomes naturalized.

4 Ed., 407; 20 W., 230; 21 W., 60.

§ 17. Such alien shall not be capable of taking or holding any lands or real estate, which may have descended, or been devised or conveyed to him previously to his having become such resident, and made such deposition or affirmation as aforesaid.

Not to hold lands previously acquired.

See Laws of 1845, ch. 115; 20 N. Y., 320; 21 W., 62; 4 Ed., 407.

§ 18. When such alien shall die within six years after making and filing such deposition, intestate, leaving heirs inhabitants of the United States, such heirs shall take by descent, and hold any real estate of which such alien died seised in the same manner as they would have inherited if such alien had been, at the time of his death, a citizen of this state.

Heirs to inherit in certain cases.

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Laws of 1826, 348, § 2.

§ 19. If any alien shall sell and dispose of any real estate, which he is entitled by law to hold and dispose of, he, his heirs and assigns, may take mortgages in his or their own name as a collateral security for the purchase money due thereon, or any part thereof; and such mortgagee, his heirs, assigns or legal representatives, or any of them, may re-purchase any of the said premises, on any sale thereof made by virtue of any power contained in such mortgage, or by virtue of any judgment or decree of any court of law or equity, rendered in order to enforce the payment of any part of such money, and may hold the same premises, in the like manner, and with the same authority, as the same were originally held by such mortgagor.

On sale of certain lands, aliens may take mortgages, and may re-purchase lands sold in certain cases.

2 R. L., 542, § 2; 20 N. Y., 320.

§ 20. Every alien who shall hold any real estate by virtue of any of the foregoing provisions, shall be subject to duties, assessments, taxes and burthens, as if he were a citizen of this state; but shall be incapable of voting at any election, or of being elected or appointed to any office, or of serving on any jury.

Liabilities and incapacities of certain aliens.

Laws of 1825, 427, § 4.

See Laws of 1843, ch. 87; 1845, ch. 115; 1834, ch. 272; 1857, ch. 576.

TITLE II.

OF THE NATURE AND QUALITIES OF ESTATES IN REAL PROPERTY, AND THE ALIENATION THEREOF.

ART. 1. — Of the creation and division of estates.

ART. 2. — Of uses and trusts.

ART. 3. — Of powers.

ART. 4. — Of alienation by deed.

TITLE 1.

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 40. To whom rents and profits of lands, in certain cases to belong.
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 42. Expectant estates not herein enumerated, abolished.
 43. Nature of estates in severalty, joint tenancy and in common.
 44. What to be deemed estates in common, what in joint tenancy.

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Enumera-
tion of es-
tates in
land.

§ 1. Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance.

11 N. Y., 494; 8 N. Y., 52; 26 B., 210; 22 B., 402.

What estate
a fee simple

§ 2. Every estate of inheritance, notwithstanding the abolition of tenures, shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be termed a fee simple absolute, or an absolute fee.

28 B., 339; 1 B., 576.

Estates tail
abolished.
Their

§ 3. All estates tail are abolished; and every estate which would be adjudged a fee tail, according to the law of this

state, as it existed previous to the twelfth day of July, one thousand seven hundred and eighty-two, shall hereafter be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute.

1 R. L., 52, § 1; 6 N. Y., 421; 2 N. Y., 357, 387; 5 D., 46; 12 J. R., 176; 3 B., 247.

ART. 1.
nature
declared.

§ 4. Where a remainder in fee shall be limited upon any estate, which would be adjudged a fee tail, according to the law of this state, as it existed previous to the time mentioned in the last section, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker, without issue living at the time of such death.

5 D., 35; 2 D., 9, 336.

Certain
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§ 5. Estates of inheritance and for life, shall continue to be denominated estates of freehold; estates for years, shall be chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on executions.

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Freeholds;
chattels
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tel interests

§ 6. An estate during the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

3 H., 442; 5 D., 414.

Estates for
life of third
person
when free-
hold, &c.

§ 7. Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy.

1 S. Ch., 342.

In posses-
sion or
expectancy.

§ 8. An estate in possession, is where the owner has an immediate right to the possession of the land. An estate in expectancy, is where the right to the possession is postponed to a future period.

[723]
Definition
of those
estates.

§ 9. Estates in expectancy, are divided into,

1. Estates commencing at a future day, denominated future estates: and,

2. Reversions.

6 N. Y., 360.

Enumera-
tion of es-
tates in
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§ 10. A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the dermination, by lapse of time or otherwise, of a precedent estate, created at the same time.

6 N. Y., 360; 31 B., 562.

Future es-
tates.

§ 11. Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

6 N. Y., 360; 31 B., 562; 5 Pal., 466.

When they
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§ 12. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing

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 39. When profits, may be applied to education, &c. of infants.
 40. To whom rents and profits of lands, in certain cases to belong.
 41. What deemed the time of creation of expectant estates.
 42. Expectant estates not herein enumerated, abolished.
 43. Nature of estates in severalty, joint tenancy and in common.
 44. What to be deemed estates in common, what in joint tenancy.

[792]

Enumera-
tion of es-
tates in
land.

§ 1. Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance.

11 N. Y., 494; 8 N. Y., 52; 26 B., 210; 22 B., 402.

What estate
a fee simple

§ 2. Every estate of inheritance, notwithstanding the abolition of tenures, shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be termed a fee simple absolute, or an absolute fee.

28 B., 339; 1 B., 576.

Estates tail
abolished.
Their

§ 3. All estates tail are abolished; and every estate which would be adjudged a fee tail, according to the law of this

state, as it existed previous to the twelfth day of July, one thousand seven hundred and eighty-two, shall hereafter be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute.

1 R. L., 52, § 1; 6 N. Y., 421; 2 N. Y., 357, 387; 5 D., 46; 12 J. R., 176; 3 B., 247.

ART. 1.
nature
declared.

§ 4. Where a remainder in fee shall be limited upon any estate, which would be adjudged a fee tail, according to the law of this state, as it existed previous to the time mentioned in the last section, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker, without issue living at the time of such death.

5 D., 35; 2 D., 9, 336.

Certain
remainders
valid.

§ 5. Estates of inheritance and for life, shall continue to be denominated estates of freehold; estates for years, shall be chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on executions.

11 N. Y., 498; 8 N. Y., 52; 25 B., 108; 17 B., 396; 12 B., 481; 11 B., 499; 2 B., 207, 613; 1 E. D. S., 333.

Freeholds;
chattels
real; chat-
tel interests

§ 6. An estate during the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

3 H., 442; 5 D., 414.

Estates for
life of third
person
when free-
hold, &c.

§ 7. Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy.

1 S. Ch., 342.

In posses-
sion or
expectancy.

§ 8. An estate in possession, is where the owner has an immediate right to the possession of the land. An estate in expectancy, is where the right to the possession is postponed to a future period.

[723]
Definition
of those
estates.

§ 9. Estates in expectancy, are divided into,

1. Estates commencing at a future day, denominated future estates: and,

2. Reversions.

6 N. Y., 360.

Enumera-
tion of es-
tates in
expectancy

§ 10. A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the dermination, by lapse of time or otherwise, of a precedent estate, created at the same time.

6 N. Y., 360; 31 B., 562.

Future es-
tates.

§ 11. Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

6 N. Y., 360; 31 B., 562; 5 Pal., 466.

When they
are remain-
ders.

§ 12. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing

Reversions.

TITLE 2.

in possession on the determination of a particular estate granted or devised.

Vested and
contingent
future
estates.

§ 13. Future estates are either vested or contingent. They are vested, when there is a person in being, who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate. They are contingent, whilst the person to whom, or the event upon which they are limited to take effect, remains uncertain.

18 N. Y., 418; 6 N. Y., 360; 31 B., 562; 28 B., 367; 5 B., 101; 2 B., 248.

Void future
estates.

§ 14. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation for a longer period than is prescribed in this Article. Such power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed.

Suspending
power of
alienation.

9 N. Y., 403; 6 N. Y., 467; 5 N. Y., 413; 31 B., 336; 30 B., 321; 10 B., 388; 9 B., 344; 8 B., 28; 7 B., 592; 5 B., 101; 4 B., 89; 3 B., 244; 1 D., 57; 26 W., 21, 236; 24 W., 661; 20 W., 564; 18 W., 257; 16 W., 61, 324; 14 W., 265; 9 Pal., 110, 521; 8 Pal., 106, 303, 485; 7 Pal., 230, 534; 5 Pal., 172, 318, 602; 4 Pal., 342; 4 S. C., 539.

How long
it may
be suspen-
ded.

§ 15. The absolute power of alienation, shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate, except in the single case mentioned in the next section.

9 N. Y., 403; 6 N. Y., 467, 510; 7 N. Y., 548; 5 N. Y., 413; 31 B., 336; 17 B., 25; 10 B., 388; 9 B., 344; 8 B., 20; 7 B., 592; 5 B., 438; 16 W., 61; 14 W., 265; 13 W., 441; 5 D., 646; 1 D., 449; 5 Pal., 220; 4 S. Ch., 414, 525, 528; 2 S. Ch., 56; 2 Du., 57; 5 S. C., 174, 363; 4 S. C., 539.

Contingent
remainder
in fee.

§ 16. A contingent remainder in fee, may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, shall die under the age of twenty-one years, or upon any other contingency, by which the estate of such persons may be determined before they attain their full age.

26 B., 233; 1 S. Ch., 178.

Limitation
of success-
ive estates
for life.

§ 17. Successive estates for life shall not be limited, unless to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and upon the death of those persons, the remainder shall take effect in the same manner as if no other life estates had been created.

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9 N. Y., 403; 8 B., 538; 7 B., 241; 6 B., 502; 16 W., 324.

Remainder
upon cer-
tain estates
for life.

§ 18. No remainder shall be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created upon such an estate in a term for years, unless it be for the whole residue of such term.

§ 19. When a remainder shall be created upon any such life estate, and more than two persons shall be named, as the persons during whose lives the life estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced.

ART. 1.
When remainder to take effect in certain cases.

§ 20. A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited, be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof.

Contingent remainder on a term for years.

§ 21. No estate for life, shall be limited as a remainder on a term of years, except to a person in being, at the creation of such estate.

Remainder of estates for life.

§ 22. Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue," shall be construed to mean heirs or issue, living at the death of the person named as ancestor.

Meaning of "heirs" and "issue" in certain remainders.

13 N. Y., 273; 3 B., 387; 3 W., 521; 3 Pal., 30.

§ 23. All the provisions contained in this Article, relative to future estates, shall be construed to apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years, shall not be suspended for a longer period than the absolute power of alienation can be suspended, in respect to a fee.

Limitations on chattels real.

3 B. Ch. 305; 5 D., 652; 3 Pal., 30.

§ 24. Subject to the rules established in the preceding sections of this Article, a freehold estate as well as a chattel real, may be created, to commence at a future day; an estate for life may be created, in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this Article.

Remainders future and contingent estates, how created.

3 B., 387; 7 Pal., 534.

§ 25. Two or more future estates, may also be created, to take effect in the alternative, so that if the first in order shall fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

Two or more future estates.

§ 26. No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect.

Certain future estates not to be void.

5 Pal., 463.

§ 27. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be con-

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Remainder upon a contingency.

TITLE 1.

Heirs of a tenant for life, when to take as purchasers.

strued a conditional limitation, and shall have the same effect as such limitation would have by law.

§ 28. Where a remainder shall be limited to the heirs, or heirs of the body of a person to whom a life estate, in the same premises, shall be given, the persons who, on the termination of the life estate, shall be the heirs, or heirs of the body of such tenant for life, shall be entitled to take as purchasers, by virtue of the remainder so limited to them.

11 N. Y., 401; 4 Kent. Com., 224.

Construction of certain remainders.

§ 29. When a remainder on an estate for life, or for years, shall not be limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

Posthumous children.

§ 30. Where a future estate shall be limited to heirs or issue, or children, posthumous children shall be entitled to take, in the same manner as if living at the death of their parent.

2 B., 248.

Id.

§ 31. A future estate depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Expectant estates not to be defeated, &c.

§ 32. No expectant estate can be defeated or barred by any alienation, or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseisin, forfeiture, surrender, merger or otherwise.

When to be defeated.

§ 33. The last preceding section shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means, which the party creating such estate shall, in the creation thereof, have provided for or authorised; nor shall an expectant estate thus liable to be defeated, be on that ground adjudged void in its creation.

Remainders not to be defeated in certain cases.

§ 34. No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect, in the same manner and to the same extent, as if the precedent estate had continued to the same period.

18 N. Y., 418.

Qualities of expectant estates.

§ 35. Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

12 N. Y., 133; 31 B., 562; 7 Pal., 76.

Future profits of lands.

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§ 36. Dispositions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this Article, in relation to future estates in lands.

17 N. Y., 567; 2 B., 248; 3 B. Ch., 92; 5 Pal., 480; 4 Pal., 328; 2 S. Ch., 474.

ART. 1.
Accumulation of profits of lands.

§ 37. An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed, sufficient to pass real estate, as follows :

1. If such accumulation be directed to commence on the creation of the estate, out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority :

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this Article permitted for the vesting of future estates and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority.

17 B., 25 ; 4 Pai., 328 ; 4 S. S. C., 442.

§ 38. If, in either of the cases mentioned in the last section, the direction for such accumulation shall be for a longer term than during the minority of the persons intended to be benefitted thereby, it shall be void as respects the time beyond such minority. And all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

Other directions, when void in part.

When wholly void.

2 B. Ch., 518 ; 17 B., 25 ; 4 S. S. C., 442 ; 5 Pai., 480.

§ 39. Where such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the chancellor, upon the application of their guardian, may direct a suitable sum out of such rents and profits to be applied to their maintenance and education.

Applications of profits, &c. to support, &c., of infants.

6 Pia., 136.

§ 40. When in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation or of the ownership, during the continuance of which, the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

In certain cases, who entitled to profits of land.

23 N. Y., 83 ; 15 N. Y., 324 ; 28 B., 143 ; 17 B., 84 ; 2 B. Ch., 518.

§ 41. The delivery of the grant, where an expectant estate is created by grant ; and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

Expectant estates, when deemed created.

3 B., 387.

§ 42. All expectant estates, except such as are enumerated and defined in this Article, are abolished.

Certain expectant estates abolished.

§ 43. Estates, in respect to the number and connexion of their owners, are divided into estates in severalty, in joint

Estates in severalty, joint

TITLE 2
tenacity
and in com-
mon.

tenancy and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this Chapter.

[727]
What to be
in common,
what in
joint te-
nancy.

§ 44. Every estate granted or devised to two or more persons, in their own right, shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate, vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested, as to estates hereafter to be granted or devised.

1 R. L., 54, § 6 & 7; 27 B., 272; 5 J. C. R., 431.

ARTICLE SECOND.

OF USES AND TRUSTS.

- SEC. 45. Uses and trusts, not herein authorised, abolished.
46. Existing executed uses, confirmed as legal estates.
 47. Persons entitled to possession of lands, declared the legal owners thereof.
 48. Last section not to affect active trusts.
 49. No estate granted for the use of another, to vest in the trustees.
 50. Previous sections not to apply to resulting or implied or express trusts.
 51. Grant to one, for consideration paid by another, vests title in grantee.
 52. But trust to result in favor of creditors of person paying consideration.
 53. 51st section not to extend to certain cases.
 54. Purchasers in good faith, not to be affected by implied trusts.
 55. For what purposes express trusts may be created.
 56. Certain devises in trust, to be deemed powers.
 57. In certain cases, profits of land liable to creditors.
 58. Express trusts not before authorised, to be powers in trust.
 59. In such case, land to remain in and descend to persons entitled.
 60. Trustees under valid express trusts, to have whole estate.
 61. Qualification of last section.
 62. Estates not included in express trust, to remain in grantor.
 63. Powers of parties interested in certain trusts.
 64. Conveyances not declaring trust, absolute in certain cases.
 65. Sales, &c., contrary to the trust, void.
 66. Misapplication of money by trustees, not to affect others.
 67. Estate of trustee to cease when purpose ceases.
 68. Disposition of trust, on death of surviving trustee.
 69. When and how trustee may resign.
 70. When and how trustee may be removed.
 71. Appointment of trustees in place of those resigning or removed, &c.
 72. Three last sections applicable only to express trusts.

Certain
uses and
trusts abol-
ished.

§ 45. Uses and trusts, except as authorised and modified in this Article, are abolished; and every estate and interest in lands, shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this Chapter.

15 N. Y., 477; 12 N. Y., 403; 29 B., 657; 27 B., 272; 17 B., 105; 11 B., 407; 9 B., 340; 6 B., 484; 4 D., 442; 3 S. S. C., 360; 24 W., 661; 18 How. P. R., 132.

Executed
uses, exist-
ing.

§ 46. Every estate which is now held as an use, executed under any former statute of this state, is confirmed as a legal estate.

6 B., 484; 4 D., 385.

§ 47. Every person, who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

1 R. L., 72, § 1, 2 & 3; 23 N. Y., 377; 10 N. Y., 271; 9 N. Y., 403; 7 N. Y., 570; 5 N. Y., 460; 3 N. Y., 535; 30 B., 320; 13 B., 92; 9 B., 519; 6 B., 484; 5 B., 190; 1 B., 33; 1 B. Ch., 20, 220; 2 H., 574, 491; 7 Pal., 534, 185-193; 4 Pal., 404; 2 S. Ch., 296; 21 W., 147; 17 J. R., 350; 14 W., 179.

ART. 2
Right to possession of land creates legal ownership.

§ 48. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees, is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

6 B., 484; 4 Pal., 352; 4 D., 399; 7 Pal., 182.

Active trusts not affected by last section. (728)

§ 49. Every disposition of lands, whether by deed or devise hereafter made, shall be directly to the person in whom the right to the possession and profits, shall be intended to be invested, and not to any other, to the use of, or in trust for, such person; and if made to one or more persons, to the use of, or in trust for, another, no estate or interest, legal or equitable, shall vest in the trustee.

1 R. L., 72, § 1, 2 & 3; 23 N. Y., 377; 10 N. Y., 271; 7 N. Y., 570; 5 N. Y., 460; 3 N. Y., 535; 26 B., 239, 479; 6 B., 98; 1 D., 57; 9 B., 516.

Trustees of estate for use of another, take no interest.

§ 50. The preceding sections in this Article shall not extend to trusts arising, or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts, as are herein after authorised and defined.

7 N. Y., 570; 2 N. Y., 373; 9 B., 589; 4 D., 439; 16 J. R., 197; 5 J. C. R., 1; 3 Pal., 390; 4 S. S. C., 524.

Preceding sections qualified.

§ 51. Where a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

1 R. L., 74, § 4; 15 N. Y., 478; 10 N. Y., 271; 29 B., 484; 16 B., 376; 12 B., 653; 10 B., 102; 6 B., 484; 5 B., 57; 2 Ed., 619; 14 How. P. R., 11; 8 Pal., 225; 2 B. Ch., 582.

Grant to one for money paid by another, no trust to result.

§ 52. Every such conveyance shall be presumed fraudulent, as against the creditors, at that time, of the person paying the consideration; and where a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

22 N. Y., 566; 15 N. Y., 478; 10 N. Y., 271; 31 B., 394; 29 B., 484; 12 B., 653; 6 B., 484; 4 D., 442; 1 J. Ca., 153; 3 J. R., 216; 11 J. R., 91; 13 J. R., 463; 16 J. R., 197; 1 J. C. R., 582; 2 J. C. R., 405; 3 Pal., 478; 4 Pal., 578; 10 Pal., 568; 18 W., 257; 3 B., 555.

Except for benefit of creditors, &c.

§ 53. The provisions of the preceding fifty-first section shall

Section 51 qualified.

TITLE 1.

not extend to cases, where the alienee named in the conveyance, shall have taken the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or where such alienee, in violation of some trust, shall have purchased the lands so conveyed, with monies belonging to another person.

18 N. Y., 515; 11 B., 407; 16 B., 376; 17 B., 103.

Purchasers
protected.

§ 54. No implied or resulting trust shall be alleged or established, to defeat or prejudice the title of a purchaser, for a valuable consideration, and without notice of such trust.

22 N. Y., 566.

For what
purposes
express
trusts may
be created.

§ 55. Express trusts may be created, for any or either of the following purposes:

1. To sell lands for the benefit of creditors:

2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon:

3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the first Article of this Title:

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4. To receive the rents and profits of lands, and to accumulate the same, for the purposes and within the limits prescribed in the first Article of this Title.

23 N. Y., 377; 17 N. Y., 567; 12 N. Y., 403; 7 N. Y., 257; 6 N. Y., 578; 5 N. Y., 413, 557; 2 N. Y., 306; 31 B., 336; 25 B., 395; 23 B., 498; 20 B., 639; 18 B., 473; 9 B., 340, 585; 5 B., 101, 144, 444, 613; 3 B. Ch., 92; 2 B. Ch., 517; 3 H., 101; 5 D., 651; 4 D., 389; 1 D., 57; 7 Pai., 234, 275; 5 Pai., 220, 461; 22 W., 486; 14 W., 265; 11 W., 240; 2 Ed., 91; 4 S. Ch., 414; 6 S. S. C., 363; 3 S. S. C., 502; 3 Ab., 403; 13 How. P. R., 157; 8 How. P. R., 389; Laws of 1830, ch. 320, § 10; 2 Du., 59.

Certain de-
visees in
trust, to be
deemed
powers.

§ 56. A devise of lands to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

18 N. Y., 107; 2 B., 537; 2 Ed., 569; 2 H., 569.

Profits of
land liable
to creditors
in certain
cases.

§ 57. Where a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable, in equity, to the claims of the creditors of such person, in the same manner as other personal property, which cannot be reached by an execution at law.

6 N. Y., 578; 18 B., 469; 1 B. Ch., 36; 8 Pai., 85; 5 Pai., 586; 2 Ed., 379; 3 S. S. C., 541; 14 N. Y., 41; 11 Pai., 140.

Other ex-
press
trusts, to be
powers in
trust.

§ 58. Where an express trust shall be created, for any purpose not enumerated in the preceding sections, no estate shall vest in the trustees; but the trust, if directing or autho-

rising the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers, contained in the third Article of this Title.

12 N. Y., 404; 7 N. Y., 570; 23 B., 499; 9 B., 519; 1 B., 58; 9 Pal., 116; 8 Pal., 120; 3 S. Ch., 554; 8 W., 661; 18 W., 257; 22 W., 483.

§ 59. In every case where the trust shall be valid as a power, the lands to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

And land, &c., to descend to persons entitled.

§ 60. Every express trust, valid, as such, in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust. The persons for whose benefit the trust is created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

Trustees of express trusts to have whole estate.

21 N. Y., 576; 17 N. Y., 567; 10 N. Y., 271; 9 N. Y., 413; 6 N. Y., 578; 3 N. Y., 535; 31 B., 336; 25 B., 395; 2 B., 601; 1 B. Ch., 36; 2 Ed., 559; 7 How. P. R., 349; 4 E. D. S., 134; 3 S. S. C., 531.

§ 61. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates, shall belong, in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust. Every such grantee or devisee shall have a legal estate in the lands, as against all persons, except the trustees and those lawfully claiming under them.

Last section qualified.

21 N. Y., 576; 31 B., 336; 25 B., 395; 4 E. D. S., 134.

§ 62. Where an express trust is created, every estate and interest not embraced in the trust and not otherwise disposed of, shall remain in, or revert to, the person creating the trust, or his heirs, as a legal estate.

Interests remaining in grantor of express trust.

21 N. Y., 576.

§ 63. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable.

[730] Powers over trust, of party interested.

19 N. Y., 455; 12 N. Y., 401; 6 N. Y., 578; 31 B., 336; 26 B., 453; 7 B., 235; 5 B., 198; 1 B. Ch., 36; 8 Pal., 85; 7 Pal., 521; 5 Pal., 586; 4 Ed., 507; 3 S. Ch., 554; 1 S. Ch., 341; 5 S. S. C., 363; 3 S. S. C., 541; 22 W., 549; 18 How. P. R., 54; 16 W., 61; 24 W., 641.

§ 64. Where an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute, as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

Effect of omitting trust in conveyance.

29 B., 484; 22 B., 97.

TITLE 1.

not extend to cases, where the alienee named in the conveyance, shall have taken the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or where such alienee, in violation of some trust, shall have purchased the lands so conveyed, with monies belonging to another person.

18 N. Y., 515; 11 B., 407; 16 B., 376; 17 B., 103.

Purchasers protected.

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22 N. Y., 566.

For what purposes express trusts may be created.

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1. To sell lands for the benefit of creditors:

2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon:

3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the first Article of this Title:

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4. To receive the rents and profits of lands, and to accumulate the same, for the purposes and within the limits prescribed in the first Article of this Title.

23 N. Y., 377; 17 N. Y., 567; 12 N. Y., 403; 7 N. Y., 257; 6 N. Y., 578; 5 N. Y., 413, 557; 2 N. Y., 306; 31 B., 336; 25 B., 395; 23 B., 498; 20 B., 639; 18 B., 473; 9 B., 340, 585; 5 B., 101, 144, 444, 613; 3 B. Ch., 92; 2 B. Ch., 517; 3 H., 101; 5 D., 651; 4 D., 389; 1 D., 57; 7 Pai., 234, 275; 5 Pai., 220, 461; 22 W., 486; 14 W., 265; 11 W., 240; 2 Ed., 91; 4 S. Ch., 414; 6 S. S. C., 363; 3 S. S. C., 502; 3 Ab., 403; 13 How. P. R., 157; 8 How. P. R., 389; Laws of 1830, ch. 320, § 10; 2 Du., 59.

Certain devisees in trust, to be deemed powers.

§ 56. A devise of lands to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

18 N. Y., 107; 2 B., 537; 2 Ed., 569; 2 H., 569.

Profits of land liable to creditors in certain cases.

§ 57. Where a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable, in equity, to the claims of the creditors of such person, in the same manner as other personal property, which cannot be reached by an execution at law.

6 N. Y., 578; 18 B., 469; 1 B. Ch., 36; 8 Pai., 85; 5 Pai., 586; 2 Ed., 379; 3 S. S. C., 541; 14 N. Y., 41; 11 Pai., 140.

Other express trusts, to be powers in trust.

§ 58. Where an express trust shall be created, for any purpose not enumerated in the preceding sections, no estate shall vest in the trustees; but the trust, if directing or autho-

rising the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers, contained in the third Article of this Title.

12 N. Y., 404; 7 N. Y., 570; 23 B., 499; 9 B., 519; 1 B., 58; 9 Pal., 116; 8 Pal., 120; 3 S. Ch., 554; 8 W., 661; 18 W., 257; 22 W., 483.

§ 59. In every case where the trust shall be valid as a power, the lands to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

And land, &c., to descend to persons entitled.

§ 60. Every express trust, valid, as such, in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust. The persons for whose benefit the trust is created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

Trustees of express trusts to have whole estate.

21 N. Y., 576; 17 N. Y., 567; 10 N. Y., 271; 9 N. Y., 413; 6 N. Y., 578; 3 N. Y., 535; 31 B., 336; 25 B., 395; 2 B., 601; 1 B. Ch., 36; 2 Ed., 559; 7 How. P. R., 349; 4 E. D. S., 134; 3 S. S. C., 531.

§ 61. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates, shall belong, in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust. Every such grantee or devisee shall have a legal estate in the lands, as against all persons, except the trustees and those lawfully claiming under them.

Last section qualified.

21 N. Y., 576; 31 B., 336; 25 B., 395; 4 E. D. S., 134.

§ 62. Where an express trust is created, every estate and interest not embraced in the trust and not otherwise disposed of, shall remain in, or revert to, the person creating the trust, or his heirs, as a legal estate.

Interests remaining in grantor of express trust.

21 N. Y., 576.

§ 63. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable.

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Powers over trust, of party interested.

19 N. Y., 455; 12 N. Y., 401; 6 N. Y., 578; 31 B., 336; 26 B., 453; 7 B., 235; 5 B., 198; 1 B. Ch., 36; 8 Pal., 85; 7 Pal., 521; 5 Pal., 586; 4 Ed., 507; 3 S. Ch., 554; 1 S. Ch., 341; 5 S. S. C., 363; 3 S. S. C., 541; 22 W., 549; 18 How. P. R., 54; 16 W., 61; 24 W., 641.

§ 64. Where an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute, as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

Effect of omitting trust in conveyance.

29 B., 484; 22 B., 97.

TITLE 1.

not extend to cases, where the alienee named in the conveyance, shall have taken the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or where such alienee, in violation of some trust, shall have purchased the lands so conveyed, with monies belonging to another person.

18 N. Y., 515; 11 B., 407; 16 B., 376; 17 B., 103.

Purchasers
protected.

§ 54. No implied or resulting trust shall be alleged or established, to defeat or prejudice the title of a purchaser, for a valuable consideration, and without notice of such trust.

22 N. Y., 566.

For what
purposes
express
trusts may
be created.

§ 55. Express trusts may be created, for any or either of the following purposes:

1. To sell lands for the benefit of creditors:

2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon:

3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the first Article of this Title:

(739)

4. To receive the rents and profits of lands, and to accumulate the same, for the purposes and within the limits prescribed in the first Article of this Title.

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deemed
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Other ex-
press
trusts, to be
powers in
trust.

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§ 59. In every case where the trust shall be valid as a power, the lands to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

And land, &c., to descend to persons entitled.

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Trustees of express trusts to have whole estate.

21 N. Y., 576; 17 N. Y., 567; 10 N. Y., 271; 9 N. Y., 413; 6 N. Y., 578; 3 N. Y., 535; 31 B., 336; 25 B., 395; 2 B., 601; 1 B. Ch., 36; 2 Ed., 559; 7 How. P. R., 349; 4 E. D. S., 134; 3 S. S. C., 531.

§ 61. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates, shall belong, in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust. Every such grantee or devisee shall have a legal estate in the lands, as against all persons, except the trustees and those lawfully claiming under them.

Last section qualified.

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Powers over trust, of party interested.

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§ 64. Where an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute, as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

Effect of omitting trust in conveyance.

29 B., 484; 22 B., 97.

TITLE 2
Certain
sales, &c.,
by trustees,
void.

§ 65. Where the trust shall be expressed in the instrument creating the estate, every sale, conveyance or other act of the trustees, in contravention of the trust, shall be absolutely void.

20 N. Y., 21; 18 N. Y., 107; 12 N. Y., 394; 6 N. Y., 360; 31 B., 336; 30 B., 321; 20 B., 404; 7 How. P. R., 349.

Others not
to be affect-
ed by mis-
conduct of
trustees.

§ 66. No person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorised to receive, shall be responsible for the proper application of such money, according to the trust; nor shall any right or title, derived by him from such trustee, in consideration of such payment, be impeached or called in question, in consequence of any misapplication, by the trustee, of the monies paid.

10 Pal., 282; 12 N. Y., 403; 30 B., 133; 22 B., 99; 7 J. C. R., 150; 16 How. P. R., 357.

When es-
tate of trust-
tee to cease.

§ 67. When the purposes for which an express trust shall have been created, shall have ceased, the estate of the trustees shall also cease.

5 Pal., 458; 4 Pal., 404; 2 S. Ch., 296; 9 B., 516.

Trust estate
not to de-
scend, &c.
Trust to
vest in
chancery.

§ 68. Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the court of chancery, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose, under the direction of the court.

27 B., 407; 9 B., 638; 7 Pal., 107; 5 Pal., 560.

When and
how trustee
may resign.

§ 69. Upon the petition of any trustee, the court of chancery may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms, as the rights and interests of the persons interested in the execution of the trust, may require.

19 N. Y., 455; 25 B., 99; 1 B. Ch., 568; 3 Pal., 420.

When and
how trustee
may be re-
moved.

§ 70. Upon the petition or bill of any person interested in the execution of a trust, and under such regulations as for that purpose shall be established, the court of chancery may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who, for any other cause, shall be deemed an unsuitable person to execute the trust.

9 N. Y., 176; 2 B., 447; 1 E. D. S., 572.

How places
supplied.

§ 71. The chancellor shall have full power to appoint a new trustee, in place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause the trust to be executed by one of its officers, under its direction.

25 B., 99; 1 B. Ch., 568; 5 Pal., 47, 560; 11 Ab., 472.

§ 72. The three last sections shall extend only to cases of express trusts.

ART. 3.
Application
of three last
sections.

See Laws of 1840, ch. 318; 1841, ch. 261; 1846, ch. 74; 1839, ch. 174, 184; 1849, ch. 373; 1845, ch. 112; 1855, ch. 432, ch. 230; 1852, ch. 203.

ARTICLE THIRD.

OF POWERS.

SEC. 73. Powers as they now exist abolished; future powers to be governed by this Article.

74. Definition of a power.
75. Who capable of granting powers.
76. Powers, general or special, and beneficial or in trust.
- 77 & 78. Definitions of general and special powers.
79. When a general or special power is beneficial.
80. Married women may execute general and beneficial powers.
81. Absolute power of disposition in tenant for life, &c. creates a fee.
82. Like power to any other, creates absolute fee as to creditors.
83. When grantee of such power entitled to absolute fee.
84. Power to devise inheritance to be deemed absolute power in certain cases.
85. Power to dispose of fee in certain cases, absolute power of disposition.
86. Effect of reserving power of revocation.
87. To whom special and beneficial powers may be granted.
88. Power of tenant for life to make leases, not assignable, &c.
89. To whom it may be released.
- 90 & 91. Effect of mortgages by persons having power to make leases.
92. Future beneficial powers not herein enumerated, invalid.
93. Liability of beneficial powers in equity, to creditors.
94. When general powers are in trust.
95. When special powers are in trust.
96. Trust powers imperative, unless expressly made optional.
97. Effect of a right of selection by grantee of power.
- 98 & 99. Powers to distribute among several, how construed.
100. Chancery to execute power on death of trustee having right of selection.
101. Also where person to execute power is not designated.
102. Certain prior sections to apply to power in trust.
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104. Effect of assignments under insolvent acts, upon beneficial powers.
105. Powers that may be reserved by grantors in conveyances.
106. By what instruments powers may be granted.
107. When powers to be recorded.
108. Powers irrevocable unless authority is expressly reserved.
109. In whom powers may be vested; by whom exercised.
110. Married women, when and how to execute powers.
111. Married women not to execute power until of age.
112. Powers to be executed by all surviving grantors thereof.
113. By what instruments powers to be executed.
114. Such instruments to be deemed conveyances.
115. Power to dispose by devise, how executed.
116. Power to dispose by grant, cannot be executed by will.
117. Executions by married women, to be acknowledged.
118. Execution governed by preceding rules, although otherwise directed by grantor.
119. Useless formalities directed, dispensed with.
120. Nominal conditions may be disregarded.
121. In other respects, directions of grantor to be observed.
122. Consent of third persons to execution of power, how evidenced.

TITLE 2.

SEC. 123. Dispositions not void on account of being too extensive.

124. Instruments executing power valid, although power not recited.

125. Such instruments affected by fraud.

126. General terms in a will sufficient to execute power to devise.

127. Estates given to descendants by virtue of certain powers, to be advancements.

128. How term during which alienation may be suspended, to be computed.

129. Who capable of taking in execution of power.

130. Authority of married women, under powers.

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131. Defective executions of powers, corrected.

132. Relief to purchasers under defective executions.

133. Powers to sell in mortgages, to pass to assignees thereof.

134. This Article not to extend to simple powers of attorney, &c.

135. Definition of the terms "grantor of a power" and "grantee of a power."

Powers as
they now
exist abol-
ished.
Future
powers.

§ 73. Powers, as they now exist by law, are abolished; and from the time this Chapter shall be in force, the creation, construction and execution of powers, shall be governed by the provisions of this Article.

Definition
of a power.

§ 74. A power is an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power, might himself lawfully perform.

12 N. Y., 404; 5 N. Y., 413; 1 B., 62; 3 Du., 73.

Who may
grant pow-
ers.

§ 75. No person is capable in law of granting a power, who is not at the same time, capable of aliening some interest in the lands to which the power relates.

3 Du., 95.

Division of
powers.

§ 76. Powers, as authorised in this Article, are general or special, and beneficial or in trust.

20 B., 238.

Definition
of general
powers.

§ 77. A power is general, where it authorises the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever.

21 B., 52; 1 B., 62.

Definition
of special
powers.

§ 78. A power is special,

1. Where the persons or class of persons, to whom the disposition of the lands under the power is to be made, are designated:

2. Where the power authorises the alienation, by means of a conveyance, will or charge, of a particular estate or interest less than a fee.

11 N. Y., 402.

Beneficial
powers.

§ 79. A general or special power is beneficial, when no person other than the grantee has, by the terms of its creation, any interest in its execution.

20 B., 238; 22 W., 498.

Powers to
married
women.

§ 80. A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without the concurrence of her husband, of lands conveyed or devised to her in fee.

15 N. Y., 313; 12 N. Y., 423; 7 Pal., 399; 22 W., 499; 1 B. Ch., 13, 240.

ART. 2.
Estate of
tenant for
life, &c.,
when
changed
into a fee.

§ 81. Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate, for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power should not be executed, or the lands should not be sold for the satisfaction of debts.

§ 82. Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon, but absolute, in respect to creditors and purchasers.

Certain
powers create a fee, &c.

§ 83. In all cases, where such power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee. [733] Ib.

§ 84. Where a general and beneficial power, to devise the inheritance, shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of the three last preceding sections.

Effect of
power to devise inheritance in certain cases.

§ 85. Every power of disposition shall be deemed absolute, by means of which the grantee is enabled, in his life time, to dispose of the entire fee, for his own benefit.

Power to dispose of fee.

7 Pai., 399.

§ 86. Where the grantor in any conveyance shall reserve to himself, for his own benefit, an absolute power of revocation, such grantor shall still be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

Power to revoke.

§ 87. A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the lands to which the power relates:

Special and beneficial powers, who may take.

2. To a tenant for life of the lands embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life.

15 N. Y., 307; 18 W., 270.

§ 88. The power of a tenant for life to make leases, is not assignable as a separate interest, but is annexed to his estate, and will pass, (unless specially excepted) by any conveyance of such estate. If specially excepted in any such conveyance, it is extinguished.

Power to make leases by tenant for life.

§ 89. Such power may be released by the tenant to any person entitled to an expectant estate in the lands, and shall thereupon be extinguished.

Release of such power.

§ 90. A mortgage executed by a tenant for life having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the

Mortgages by party having power to lease, &c.

TITLE 2

Effect thereof.

power; but the power is bound by the mortgage, in the same manner as the lands embraced therein.

§ 91. The effects of such a lien by mortgage on the power, are,

1. That the mortgagee is entitled, in equity, to an execution of the power, so far as the satisfaction of his debt may require :

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage, in the same manner as if in terms embraced therein.

Future beneficial powers.

§ 92. No beneficial power, general or special, hereafter to be created, other than such as are already enumerated and defined in this Article, shall be valid.

18 W., 270; 16 W., 324.

[734]
Beneficial powers liable to creditors.

§ 93. Every special and beneficial power is liable, in equity, to the claims of creditors, in the same manner as other interests that cannot be reached by an execution at law, and the execution of the power may be decreed for the benefit of the creditors entitled.

General powers, when in trust.

§ 94. A general power is in trust, when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from the alienation of the lands, according to the power.

5 B., 198, 652; 1 B., 62; 3 Ed., 212; 3 S. S. C., 555.

Special powers, when in trust.

§ 95. A special power is in trust,

1. When the disposition which it authorises, is limited to be made to any person or class of persons, other than the grantee of such power.

2. When any person or class of persons, other than the grantee, is designated as entitled to any benefit from the disposition or charge authorised by the power.

Laws of 1830, ch. 320, § 11; 5 B., 652; 3 Ed., 212; 3 S. S. C., 559; 1 B., 58.

Trust powers imperative.

§ 96. Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled in equity, for the benefit of the parties interested.

12 N. Y., 403; 3 N. Y., 280; 5 B., 198; 8 Pal., 120; 3 Ed., 212; 1 B., 58.

Effect of right of selection.

§ 97. A trust power does not cease to be imperative, where the grantee has the right to select any, and exclude others of the persons designated as the objects of the trust.

Construction of certain powers.

§ 98. Where a disposition under a power is directed to be made to, or among or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated, shall be entitled to an equal proportion.

Ib.

§ 99. But when the terms of the power import that the estate or fund is to be distributed between the persons so

ART. 2.

designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons, in exclusion of the other.

§ 100. If the trustee of a power, with the right of selection, shall die, leaving the power unexecuted, its execution shall be decreed in equity for the benefit equally of all the persons designated, as objects of the trust.

25 B., 399; 5 Pal., 468; 3 S. S. C., 559; 2 S. S. C., 515.

§ 101. Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be exercised, its execution shall devolve on the court of chancery.

5 N. Y., 139.

§ 102. The provisions contained in the second Article of this Title, from section sixty-six to section seventy-one, both inclusive, in relation to express trusts and trustees, shall apply equally to powers in trust, and the grantees of such powers.

25 B., 100.

§ 103. The execution in whole or in part, of any trust power, may be decreed in equity, for the benefit of the creditors or assignees of any person entitled as one of the objects of the trust, to compel its execution, when the interest of the objects of such trust is assignable.

[735]
Execution of trust power when compelled by creditors, &c.

§ 104. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass to the assignees of the estate and effects of the person in whom such power or interest is vested, under any assignment authorised by the provisions of the fifth Chapter of this Act.

Beneficial powers, &c., how affected by insolvent assignments, &c.

§ 105. The grantor in any conveyance, may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved, shall be subject to the provisions of this Article, in the same manner as if granted to another.

Reservation of powers in conveyances.

12 N. Y., 404.

§ 106. A power may be granted,

1. By a suitable clause contained in a conveyance of some estate in the lands, to which the power relates:

2. By a devise contained in a last will and testament.

5 N. Y., 413; 2 S. S. C., 580.

How powers to be granted.

§ 107. Every power shall be a lien or charge upon the lands which it embraces, as against creditors and purchasers in good faith and without notice, of or from any person having an estate in such lands, only from the time the instrument containing the power shall be duly recorded. As against all other persons, the power shall be a lien from the time the instrument in which it is contained, shall take effect.

When powers to be recorded.

§ 108. Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it, is granted or reserved in the instrument creating the power.

When powers irrevocable.

12 N. Y., 404; 1 B., 62; 2 B., 58; 23 B., 498.

TITLE 2.
Who to execute powers.

§ 109. A power may be vested in any person capable in law of holding, but cannot be exercised by any person not capable, of aliening lands, except in the single case mentioned in the next section.

10 B., 604.

Married women.

§ 110. A married woman may execute a power during her marriage, by grant or devise, as may be authorised by the power, without the concurrence of her husband, unless by the terms of the power its execution by her, during marriage, is expressly or impliedly prohibited.

15 N. Y., 307; 12 N. Y., 423; 27 B., 332; 1 B. Ch., 13, 240; 10 B., 597.

Ib.

§ 111. No power vested in a married woman, during her infancy, can be exercised by her, until she attains her full age.

Execution by survivors, &c.

§ 112. Where a power is vested in several persons, all must unite in its execution; but if previous to such execution, one or more of such persons shall die, the power may be executed by the survivor or survivors.

11 N. Y., 397; 1 N. Y., 358; 1 B. Ch., 569; 2 Pal., 197.

How executed.

[736]

§ 113. No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power, if the person executing the power were the actual owner.

11 N. Y., 398.

Instruments deemed conveyances.

§ 114. Every instrument, except a will, in execution of a power, and although the power may be a power of revocation only, shall be deemed a conveyance within the meaning, and subject to the provisions, of the third Chapter of this Act.

12 N. Y., 404.

Execution of power to dispose by devise.

§ 115. Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed, according to the provisions of the sixth Chapter of this Act.

10 B., 597.

Ib. to dispose by grant.

§ 116. Where a power is confined to a disposition by grant, it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power.

4 N. Y., 11; 4 B., 412; 3 B., 128.

Married women to acknowledge executions.

§ 117. If a married woman execute a power by grant, the concurrence of her husband, as a party, shall not be requisite, but the grant shall not be a valid execution of the power, unless it be acknowledged by her on a private examination, in the manner prescribed in the third Chapter of this Act, in relation to conveyances by married women.

Directions by grantor.

§ 118. Where the grantor of a power shall have directed or authorised it to be executed by an instrument not sufficient in law to pass the estate, the power shall not be void, but its execution shall be governed by the rules before prescribed in this Article.

§ 119. When the grantor shall have directed any formalities to be observed in the execution of the power, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formalities shall not be necessary to a valid execution of the power.

ART. 8.
Directions
by grantor.

§ 120. Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

Nominal
conditions.

§ 121. With the exceptions contained in the preceding sections, the intentions of the grantor of a power, as to the mode, time and conditions of its execution, shall be observed, subject to the power of the court of chancery, to supply a defective execution, in the cases herein after provided.

When di-
rections of
grantor to
be observ-
ed.

2 D., 61.

§ 122. When the consent of a third person to the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or shall be certified in writing thereon. In the first case, the instrument of execution, in the second, the certificate, shall be signed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, in the same manner as if subscribed to a conveyance of lands.

Consent of
third per-
sons to ex-
ecution of
power.

11 N. Y., 401.

§ 123. No disposition, by virtue of a power, shall be void in law or in equity, on the ground that it is more extensive than was authorised by the power; but every estate or interest so created, so far as embraced by the terms of the power, shall be valid.

[737]
Certain dis-
positions,
not void.

§ 124. Every instrument executed by the grantee of a power, conveying an estate or creating a charge, which such grantee would have no right to convey or create, unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein.

Omission
to recite
power.

§ 125. Instruments in execution of a power are affected by fraud, both in law and equity, in the same manner as conveyances by owners or trustees.

Fraud.

§ 126. Lands embraced in a power to devise, shall pass by a will purporting to convey all the real property of the testator, unless the intent that the will shall not operate as an execution of the power, shall appear, expressly or by necessary implication.

Power to
devise, how
executed by
terms of
will.

25 B., 564.

§ 127. Every estate or interest given by a parent to a descendant, by virtue of a beneficial power, or of a power in trust with a right of selection, shall be deemed an advancement to such descendant, within the provisions of the second Chapter of this Act.

Certain es-
tates to be
advances-
ments.

§ 128. The period during which the absolute right of

Computa-
tion of term

TITLE 2
of suspension.

alienation may be suspended, by any instrument in execution of a power, shall be computed, not from the date of such instrument, but from the time of the creation of the power.

12 N. Y., 404; 3 Du., 73.

Who may
take under
powers.

§ 129. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which such person would not have been capable of taking, under the instrument by which the power was granted.

3 Du., 95; 16 W., 324.

Married
women,
their au-
thority, &c.

§ 130. When a married woman, entitled to an estate in fee, shall be authorised by a power, to dispose of such estate during her marriage, she may, by virtue of such power, create any estate, which she might create if unmarried.

Defective
executions.

§ 131. Where the execution of a power in trust shall be defective, in whole or in part, under the provisions of this Article, its proper execution may be decreed, in equity, in favor of the persons designated as the objects of the trust.

3 N. Y., 278.

Ib.

§ 132. Purchasers for a valuable consideration, claiming under a defective execution of any power, shall be entitled to the same relief in equity, as similar purchasers, claiming under a defective conveyance from an actual owner.

11 N. Y., 400.

Powers to
sell in
mortgages.

§ 133. Where a power to sell lands, shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in, and may be executed by any person, who, by assignment or otherwise, shall become entitled to the money so secured to be paid.

[738]

Application
of this arti-
cle.

§ 134. The provisions of this Article shall not extend to a simple power of attorney, to convey lands in the name, and for the benefit, of the owner.

Terms
"grantor of
a power,"
and "grantee
of a
power" de-
fined.

§ 135. The term "grantor of a power," is used in this Article, as designating the person by whom a power is created, whether by grant or devise; and the term "grantee of a power," is used as designating the person in whom a power is vested, whether by grant, devise or reservation.

11 N. Y., 401.

ARTICLE FOURTH.

OF ALIENATION BY DEED.

SEC. 136. Feoffment with livery of seisin, abolished.

137. Grants in fee or of freeholds, how executed; when to take effect.

138. Delivery essential to grants.

139. Covenants not implied in mortgages; remedy of mortgagees.

140. No covenants to be implied in conveyances.

141. Lineal and collateral warranties abolished; liability of heirs.

142. Deeds of bargain and sale, and of lease and release, deemed grants.

143. No greater estate to pass by a conveyance, than such as grantor had.

SEC. 144. Grants conclusive against certain purchasers.

- 145. Conveyances of greater estate by tenant for life or for years.
- 146. Conveyances of lands occupied, when valid without attornment.
- 147. Grant of lands possessed by claimant under adverse title, void.
- 148. But mortgages of such lands may be given; effect thereof.

§ 136. The mode of conveying lands by feoffment with livery of seisin, is abolished. Livery of seisin.

§ 137. Every grant in fee or of a freehold estate, shall be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent; if not duly acknowledged, previous to its delivery, according to the provisions of the third Chapter of this Act, its execution and delivery shall be attested by at least one witness; or if not so attested, it shall not take effect as against a purchaser or incumbrancer, until so acknowledged. Grants in fee or of freeholds, how executed; when to take effect.

13 N. Y., 514; 31 B., 157; 17 B., 103; 6 B., 42; 2 B., 618; 2 W., 575; 2 S. Ch., 633.

§ 138. A grant shall take effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law now in force in respect to the delivery of deeds, shall apply to grants hereafter to be executed. Delivery.

6 B., 103; 11 W., 240; 5 W., 533.

§ 139. No mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured; and where there shall be no express covenant for such payment, contained in the mortgage, and no bond or other separate instrument to secure such payment, shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage. Covenants in mortgages. Remedies of mortgagee.

2 B. Ch., 569.

§ 140. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. Covenants in conveyances.

13 N. Y., 158; 9 N. Y., 542; 31 B., 551; 13 B., 284; 8 Pai., 598; 14 W., 39; Cl. Ch., 503; 1 Du., 427; 11 Pai., 569; 20 B., 455; 15 B., 359.

§ 141. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement, shall be answerable upon such covenant or agreement, to the extent of the lands descended or devised to them, in the cases and in the manner prescribed by law. [739] Lineal and collateral warranties.

1 R. L., 525, § 26; 17 B., 165.

§ 142. Deeds of bargain and sale, and of lease and release, may continue to be used, and shall be deemed grants; and as such, shall be subject to all the provisions of this Chapter, concerning grants. Certain deeds declared grants

1 N. Y., 243.

§ 143. No greater estate or interest shall be construed to pass by any grant or conveyance, hereafter executed, than

Effects of certain conveyances.

TITLE 2

the grantor himself possessed at the delivery of the deed, or could then lawfully convey, except that every grant shall be conclusive as against the grantor and his heirs claiming from him by descent.

9 N. Y., 51; 1 N. Y., 248.

How far
conclusive
on purchas-
ers.

§ 144. Every grant shall also be conclusive as against subsequent purchasers from such grantor, or from his heirs claiming as such, except a subsequent purchaser, in good faith and for a valuable consideration, who shall acquire a superior title by conveyance that shall have been first duly recorded.

6 B., 356.

Convey-
ances by
tenants for
life or for
years.

§ 145. A conveyance made by a tenant for life or years of a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the title, estate or interest, which such tenant could lawfully convey.

1 N. Y., 248.

Attornment
by tenant
when un-
necessary.

§ 146. Where any lands or tenements shall be occupied by a tenant, a conveyance thereof, or of the rents or profits, or of any other interest therein, by the landlord of such tenant, shall be valid without any attornment of such tenant to the grantee; but the payment of rent to such grantor, by his tenant, before notice of the grant, shall be binding upon such grantee; and such tenant shall not be liable to such grantee for any breach of the condition of the demise, until he shall have had notice of such grant.

1 R. L., 525, § 25; 4 N. Y., 128.

Conveyance
of land ad-
versely pos-
sessed.

§ 147. Every grant of lands shall be absolutely void, if at the time of the delivery thereof, such lands shall be in the actual possession of a person claiming under a title adverse to that of the grantor.

1 R. L., 173, § 8; 22 N. Y., 172; 26 B., 454; 20 B., 439; 17 B., 665; 15 B., 497; 2 B., 157; 4 H., 469; 2 Cai., 182; 4 Du., 454; 21 W., 98; 19 B., 644; 14 B., 441; 13 B., 147; 3 Du., 35.

Mortgages
may be
given.

Effects
thereof.

Priority of
lien.

§ 148. But every person having a just title to lands, of which there shall be an adverse possession, may execute a mortgage on such lands; and such mortgage, if duly recorded, shall bind the lands from the time the possession thereof shall be recovered, by the mortgagor or his representatives. And every such mortgage shall have preference over any judgment or other instrument, subsequent to the recording thereof; and if there be two or more such mortgages, they shall severally have preference according to the time of recording the same respectively.

5 N. Y., 347.

See Laws of 1845, ch. 112; 1841, ch. 261; 1840, ch. 318; 1839, ch. 174, 184.

TITLE III.

TITLE 3.
[740]

OF ESTATES IN DOWER.

- SEC. 1. Of what widows shall be endowed.
2. Widows of aliens, if inhabitants, entitled to dower.
 3. Dower in case of exchange of lands.
 4. Dower in lands mortgaged before marriage.
 5. In lands mortgaged for purchase money.
 6. Claim to one-third of surplus proceeds of sale, in such case.
 7. Widow of mortgagee not entitled to dower.
 8. Dower forfeited by divorce for misconduct.
 9. Settlements by jointure, to bar dower.
 10. How her assent to jointure to be evidenced.
 11. Provision in lieu of dower, when to bar it.
 12. If jointure, &c., made without her assent, she to elect.
 13. If provision in lieu of dower be made by will, to elect.
 14. Deemed to have elected, unless she enter or sue, within a year.
 15. Jointures, &c., in lieu of dower, forfeited same as dower.
 16. Acts of husband, not to affect right to dower.
 17. Widow entitled to remain in husband's house 40 days.
 18. Widow to demand her dower within 20 years after husband's death.
 19. When entitled to damages, on recovering dower.
 20. Measure of such damages in different cases.
 21. Not to be estimated on certain improvements.
 22. Damages against heir for land aliened by him.
 23. Assignment of dower in satisfaction, to bar further claim.
 24. Infant heirs not to be prejudiced by a collusive recovery.
 25. Widow may bequeath crops growing in her dower land.

§ 1. A widow shall be endowed of the third part of all the lands whereof her husband was seised of an estate of inheritance, at any time during the marriage. Dower of widows.

8 N. Y., 110; 5 N. Y., 394, 502; 4 N. Y., 95; 23 B., 125; 18 B., 561; 15 B., 485; 13 B., 106; 12 B., 201, 537; 11 B., 152; 8 B., 401; 5 B., 324; 3 B., 319; 1 B., 399; 21 W., 60; 16 W., 61-622; 12 W., 66; 11 W., 592; 10 W., 486; 7 Pai., 259; 1 Pai., 634; 2 D., 430; 3 Ed., 437; 6 J. C. R., 258; 4 J. C. R., 604; 13 J. R., 180; 2 J. R., 123; 7 Cow., 357; 5 Cow., 389; 1 Cow., 463; 1 R. L., 56, § 1.

§ 2. The widow of any alien, who, at the time of his death, shall be entitled by law to hold any real estate, if she be an inhabitant of this state, at the time of such death, shall be entitled to dower, of such estate, in the same manner as if such alien had been a native citizen. Widows of aliens.

21 W., 62; 12 W., 66; 5 Cow., 713.

§ 3. If a husband, seised of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but shall make her election, to be endowed of the lands given, or of those taken, in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange. Dower in case of exchange of lands.

12 B., 537; 7 B., 638.

§ 4. Where a person seised of an estate of inheritance in Lands, mortgaged

TITLE 2.
before marriage.

lands, shall have executed a mortgage of such estate, before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

8 B., 618; 1 B., 407; 13 How. P. R., 295.

In lands mortgaged for purchase money.
[741]

§ 5. Where a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

15 J. R., 458; 10 Pai., 49; 6 Cow., 316; 20 N. Y., 412; 12 B., 543.

In such case, extent of claim to surplus proceeds of sale.

§ 6. Where, in such case, the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power of sale contained in the mortgage, or by virtue of the decree of a court of equity, and any surplus shall remain, after payment of the monies due on such mortgage and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus, for her life, as her dower.

8 B., 618.

Widow of mortgagees.

§ 7. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he acquire an absolute estate therein, during the marriage.

When dower forfeited.

§ 8. In case of divorce, dissolving the marriage contract, for the misconduct of the wife, she shall not be endowed.

1 R. L., 53, § 7; and 2 R. L., 196, § 8; 4 B., 192; 24 W., 198; 3 Ab., 150.

When barred by jointure.

§ 9. Whenever an estate in lands shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim of dower of such wife, in any lands of the husband.

1 R. L., 58 & 59, § 8 & 9.

Evidence of her assent.

§ 10. The assent of the wife to such jointure shall be evidenced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

2 Pai., 559.

When dower barred by pecuniary provisions.

§ 11. Any pecuniary provision that shall be made for the benefit of an intended wife and in lieu of dower, shall, if assented to by such intended wife, as above provided, be a bar to any right or claim of dower of such wife in all the lands of her husband.

1 J. R., 307; 5 Pai., 447; 6 J. C. R., 194.

§ 12. If before her coverture, but without her assent, or if after her coverture, lands shall be given or assured for the jointure of a wife, or a pecuniary provision be made for her, in lieu of dower, she shall make her election whether she will take such jointure or pecuniary provision, or whether she will be endowed of the lands of her husband, but she shall not be entitled to both.

5 Pai., 447; 6 J. C. R., 194.

§ 13. If lands be devised to a woman, or a pecuniary or other provision be made for her by will, in lieu of her dower, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her husband.

9 N. Y., 511; 7 Cow., 288; 5 Pai., 447; 5 H., 206; 2 D., 430; 4 B., 20; 13 B., 106.

§ 14. When a woman shall be entitled to an election, under either of the two last sections, she shall be deemed to have elected to take such jointure, devise or pecuniary provision, unless within one year after the death of her husband she shall enter on the lands to be assigned to her for her dower, or commence proceedings for the recovery or assignment thereof.

§ 15. Every jointure, devise and every pecuniary provision in lieu of dower, shall be forfeited by the woman for whose benefit it shall be made, in the same cases in which she would forfeit her dower; and upon such forfeiture, any estate so conveyed for jointure, and every pecuniary provision so made, shall immediately vest in the person or his legal representatives, in whom they would have vested on the determination of her interest therein, by the death of such woman.

§ 16. No act, deed or conveyance, executed or performed by the husband, without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the estates of married women, and no judgment or decree confessed by or recovered against him, and no laches, default, covin or crime of the husband, shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

1 R. L., 57 & 59, § 4 & 10; 2 N. Y., 249; 4 B., 201; 3 Ed., 437; 1 Ed., 349; 7 B., 388.

§ 17. A widow may tarry in the chief house of her husband, forty days after his death, whether her dower be sooner assigned to her or not, without being liable to any rent for the same, and in the mean time she shall have her reasonable sustenance out of the estate of her husband.

1 R. L., 57, § 1; 1 S. S. C., 218; 10 W., 419.

§ 18. A widow shall demand her dower within twenty years after the death of her husband; but if, at the time of such death, she be under the age of twenty-one years, or insane, or imprisoned on a criminal charge or conviction, the time during

TITLE 3.
When to elect between jointure, &c., and dower.

When between devise, &c., and dower.

[742]
When deemed to have elected.

When jointure, &c., forfeited.

Right to dower, &c. not affected by acts of husband, nor by judgments, &c., against him.

May remain in husband's house 40 days.

Dower to be demanded within 20 years, &c.

TITLE 2.

which such disability continues, shall not form any part of the said term of twenty years.

1 R. L., 57, § 1; 32 B., 429; 2 S. Ch., 569; 6 J. C. R., 194; 8 W., 661; 12 W., 139; 1 B., 500.

When to recover damages.

§ 19. Whenever in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seised, she shall be entitled also to recover damages for the withholding of such dower.

1 R. L., 57, § 2.

Measure of damages;

against heir;

against others.

§ 20. Such damages shall be one-third part of the annual value of the mesne profits of the lands, in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband, from the time of his death; and in suits against other persons, from the time of her demanding her dower of such persons; and in all cases to be estimated to the time of recovering judgment for such damages, but not to exceed six years in the whole, in any case.

(743)
Not on improvements

§ 21. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

1 R. L., 60, § 1.

Damages against heirs aliening land;

to be deducted, &c.

§ 22. Where a widow shall recover her dower in any lands aliened by the heir of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of such alienation by the heir, not exceeding six years in the whole; and the amount recovered from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and also any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

2 N. Y., 249.

Claim when barred by an assignment of dower.

§ 23. Where the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it may be pleaded in bar of any further claim of dower, by the heir of such husband, or any grantee of such heir, or any grantee of such husband.

Collusive recovery not to prejudice infant heirs.

§ 24. Where a widow not having right to dower, shall, during the infancy of the heirs of the husband, or any of them, in any suit, commenced either by the widow or by the guardian of any heir, or upon any application to the supreme court, court of common pleas, or surrogate, recover by the default or collusion of such guardian, such infant heir shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

1 R. L., 57, § 5 & 6.

§ 25. A widow may bequeath the crop in the ground of the land holden by her in dower.

1 R. L., 368, § 17.

TITLE 4
May be-
queath
crops.

TITLE IV.

ON ESTATES FOR YEARS, AND AT WILL; AND THE RIGHTS AND DUTIES OF LANDLORDS AND TENANTS.

- SEC. 1. Construction of certain agreements for use of lands.
 2. Effect of new lease, after surrender of former.
 3. Attornments by tenants void.
 4, 5 & 6. Remedy in equity against land held under contract for purchase.
 7. Tenancy at will or by sufferance, may be terminated by notice.
 8. How notice to be served.
 9. Rights of landlord on expiration of notice.
 10. Penalty on tenant for not yielding possession.
 11. Penalty on tenants, &c. for holding over after notice to quit.
 12 to 17. Repealed.
 18. Rights to distrain for rents or services, declared.
 19. Remedy by action for rent on leases for life.
 20. Rents dependent on life of another, how recovered.
 21. Remedy of executors, for arrears of rent.
 22. Rights of executors, of tenant for life having rent due.
 23. Rights of grantors, assignees, &c. of lessor of demised lands.
 24. Rights of lessors and their assignees, &c.
 25. Two last sections to extend to leases in fee, for life or for years.
 26. When landlord may recover for use and occupation.
 27. Penalty on tenant for not delivering process, served on him.

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§ 1. Agreements for the occupation of lands or tenements, in the city of New-York, which shall not particularly specify the duration of such occupation, shall be deemed valid until the first day of May next after the possession under such agreement shall commence, and the rent under such agreement shall be payable at the usual quarter days for the payment of rent in the said city, unless otherwise expressed in the agreement.

Duration of
certain
agreements.
in New
York.

Laws of 1820, 178, § 4; 21 W., 338; 5 Du., 559; 4 E. D. S., 176; 2 E. D. S., 105; 8 How. P. R., 141.

§ 2. If any lease be surrendered in order to be renewed, and a new lease be made by the chief landlord, such new lease shall be good and valid to all intents and purposes, without a surrender of all or any of the under leases derived out of such original lease so surrendered; and the chief landlord, his lessee, and the holders of such under leases, shall enjoy all their rights and interests, in the same manner and to the same extent, as if the original lease had been still continued; and the chief landlord shall have the same remedy by distress, or entry upon the demised premises for the rents and duties secured by such new lease, so far as the same do not exceed the rents and duties reserved in the original lease so surrendered.

Effect of
new lease
after sur-
render of
former lease.

1 R. L., 442, § 26 & 28; 14 N. Y., 22.

§ 3. The attornment of a tenant to a stranger shall be

Attorn-

TITLE 4
ments by
tenants.

absolutely void, and shall not in any wise affect the possession of his landlord, unless it be made,

1. With the consent of the landlord: or,
2. Pursuant to, or in consequence of, a judgment at law, or the order or decree of a court of equity; or,
3. To a mortgagee after the mortgage has become forfeited.

5 N. Y., 404; 25 B., 249; 19 How. P. R., 293.

Remedy in
equity
against land
held under
contract for
purchase.

§ 4. The interest of any person holding a contract for the purchase of lands, shall not be bound by the docketing of any judgment or decree, nor be sold by execution upon any such judgment or decree; but whenever an execution against the property of such person shall have been issued, on a judgment or decree, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution, may file a bill in chancery against such defendant and the party bound to perform such contract, to prevent the transfer of such contract, and to obtain satisfaction of the sum remaining due on such judgment or decree, out of the interest of the defendant in the said contract.

a.

9 N. Y., 51; 17 B., 139, 396; 12 B., 653; 11 B., 499; 6 B., 127; 2 B. Ch., 463; 9 Pal., 76, 423; 3 Pal., 220; Cl. Ch., 279; 6 H., 525.

(745)
Interest of
defendant
may be sold
&c.
Specific per-
formance.

§ 5. The interest of the defendant in such contract, may be sold under the decree of the court, or transferred to the complainant, in such manner and upon such terms as the court shall deem most conducive to the interests of the parties; and the court shall have power in such suit, to decree a specific performance of such contract, either in favor of the complainant, or in favor of the purchaser, if the interest in the contract shall be directed to be sold.

6 B., 127.

Interest of
defendant
how applied

§ 6. The value of the interest of the defendant holding such contract, shall be ascertained by the court, and the same, or so much thereof as may be necessary for that purpose, shall be applied to the payment of the judgment or decree of the complainant, and the residue applied to the benefit of the defendant.

12 B., 653; 6 B., 127.

Tenancy at
will, &c.,
terminated
by notice.

§ 7. Wherever there is a tenancy at will, or by sufferance created, by the tenant's holding over his term, or otherwise, the same may be terminated by the landlord's giving one month's notice in writing to the tenant, requiring him to remove therefrom.

Laws of 1820, 177, Proviso to § 1; 14 N. Y., 64; 14 B., 255; 12 B., 484; 3 B., 579; 7 Cow., 747; 4 D., 187; 19 How. P. R., 31; 11 W., 616; 5 Du., 559.

How served

§ 8. Such notice shall be served by delivering the same to such tenant, or to some person of proper age residing on the premises; or if the tenant can not be found, and there be no such person residing on the premises, such notice may be

served by affixing the same on a conspicuous part of the premises, where it may be conveniently read.

11 W., 620; 4 D., 187.

§ 9. At the expiration of one month from the service of such notice, the landlord may re-enter, or maintain ejectment, or proceed in the manner prescribed by law, to remove such tenant, without any further or other notice to quit.

14 B., 253; 12 B., 484; 4 D., 187.

Rights of landlord.

§ 10. If any tenant shall give notice of his intention to quit the premises by him holden, and shall not accordingly deliver up the possession thereof, at the time in such notice specified, such tenant, his executors or administrators, shall, from thenceforward, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be levied, sued for and recovered, at the same time and in the same manner, as the single rent; and such double rent shall be continued to be paid during all the time such tenant shall continue in possession as aforesaid.

1 R. L., 440, § 22.

Penalty on tenant for not yielding possession after giving notice.

§ 11. If any tenant, for life or years, or if any other person who may have come into the possession of any lands or tenements, under or by collusion with such tenant, shall wilfully hold over any lands or tenements after the termination of such term, and after demand made and one month's notice, in writing, given in the manner herein before prescribed, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the lands or tenements so detained, for so long a time as he shall so hold over or keep the person entitled, out of possession; and shall also pay and remunerate all special damages whatever, to which the person so kept out of possession may be subjected by reason of such holding over; and there shall be no relief in equity against any recovery had at law under this section.

1 R. L., 440, § 21, and Laws of 1820, 179, § 8.
Sects. 12 to 17 repealed by Laws of 1846, ch. 274.

Penalty on tenants, &c., for holding over after notice to quit.

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No relief in equity.

§ 18. When any certain services or certain rent reserved out of any lands or tenements, shall not be paid or rendered when due, the person entitled thereto, may distrain for the same.*

* Distress for rent abolished by Laws of 1846, ch. 274, § 1.

2 N. Y., 152; 2 H., 649; 8 Pal., 217.

[747]
Right to distrain.

§ 19. Any person having any rent due upon any lease for life or lives, may have the same remedy to recover such arrears, by action of debt, as if such lease were for years.

Remedy on leases for life.

§ 20. Every person entitled to any rents dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action or by distress,

Rents dependent on life of another.

TITLE 4.

for the recovery of all arrears of such rent, that shall be behind and unpaid at the death of such other person, as he might have had if such person was in full life.

1 R. L., 438, § 16, 18, 19, 20 & 27.

Remedy of executors, &c., for arrears of rent.

§ 21. The executors or administrators of every person to whom any rent shall have been due and unpaid at the time of his death, may have the same remedy by action or by distress, for the recovery of all such arrears, that their testator or intestate might have had, if living.

20 B., 274; 5 Cow., 502.

Executors, &c., of tenant for life.

§ 22. When a tenant for life, who shall have demised any lands, shall die on or after the day when any rent became due and payable, his executors or administrators may recover from the under tenant, the whole rent due; if he die before the day when any rent is to become due, they may recover the proportion of rent which accrued before his death.

Rights of grantees, assignees, &c., of lessor of demised land.

§ 23. The grantees of any demised lands, tenements, rents or other hereditaments, or of the reversion thereof, the assignees of the lessor of any demise, and the heirs and personal representatives of the lessor, grantee or assignee, shall have the same remedies by entry, action, distress or otherwise, for the non-performance of any agreement contained in the lease so assigned, or for the recovery of any rent, or for the doing of any waste or other cause of forfeiture, as their grantor or lessor had, or might have had, if such reversion had remained in such lessor or grantor.

1 R. L., 363; 19 N. Y., 82; 12 N. Y., 296; 14 N. Y., 22; 6 N. Y., 491; 32 B., 458; 27 B., 173; 12 B., 462; 2 H., 276, 475; 5 D., 127; 13 W., 609; 2 Hilt., 6.

Rights of lessees and their assignees, &c.

§ 24. The lessees of any lands, their assigns or personal representatives, shall have the same remedy by action or otherwise against the lessor, his grantees, assignees, or his or their representatives, for the breach of any covenant or agreement in such lease contained, as such lessee might have had against his immediate lessor, except covenants against incumbrances, or relating to the title or possession of the premises demised.

12 N. Y., 301; 27 B., 173; 12 B., 462; 4 S. S. C., 516.

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Application of two last sections.

§ 25. The provisions of the two last sections shall extend as well to grants or leases in fee, reserving rents, as to leases for life and for years.

19 N. Y., 100; 32 B., 458; 27 B., 173; 12 B., 462.

When landlord may recover for use and occupation.

§ 26. Any landlord may recover in an action on the case, a reasonable satisfaction for the use and occupation of any lands or tenements, by any person under any agreement not made by deed; and if any parol demise or other agreement, not being by deed, by which a certain rent is reserved, shall appear in evidence on the trial of any such action, the plaintiff shall not on that account be debarred from a recovery,

but may make use thereof as evidence of the amount of the damages to be recovered.

1 R. L., 444, § 31; 15 N. Y., 328; 25 B., 249; 7 B., 194; 7 H., 88; 1 Hilt., 55, 155; 6 J. R., 46, 1 D., 37; 1 W., 134; 7 W., 109; 13 J. R., 240, 297, 489.

§ 27. Every tenant to whom a declaration in ejectment, or any other process, proceeding or notice of any proceeding, to recover the land occupied by him, or the possession thereof, shall be served, shall forthwith give notice thereof to his landlord, under the penalty of forfeiting the value of three years rent of the premises so occupied by him, which may be sued for and recovered by the landlord or person of whom such tenant holds.

Penalty on tenant for not delivering, &c., notice served on him.

1 R. L., 443, § 29.

See Laws of 1846, ch. 274; 1855, ch. 17.

TITLE V.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

- SEC. 1. Words of inheritance not necessary to convey a fee, &c.
2. Intent of parties to conveyances, to be carried into effect.
 3. Purchasers from heirs, not affected by will unless it be recorded, &c.
 4. Heirs and devisees to extinguish mortgages on lands coming to them.
 5. Mortgages for purchase money to be preferred to previous judgments.
 6. When persons on whose lives estates depend, to be deemed dead.
 7. Liability of guardians, &c., holding over after their estates have ceased.
 8. Remedies of Reversioners and Remainder men, for injuries to estates.
 9. Remedies of joint tenants and tenants in common against each other.
 10. Definition of terms "real estate" and "lands."
 11. Vested rights, and construction of instruments, not to be affected.

§ 1. The term "heirs," or other words of inheritance, shall not be requisite to create or convey an estate in fee; and every grant or devise of real estate, or any interest therein, hereafter to be executed, shall pass all the estate or interest of the grantor or testator, unless the intent to pass a less estate or interest shall appear, by express terms, or be necessarily implied in the terms of such grant.

Certain words not necessary to pass a fee. All the estate of grantor to pass, unless, &c.

12 N. Y., 128; 7 N. Y., 163; 5 N. Y., 452; 4 N. Y., 56; 28 B., 364; 23 B., 498; 19 B., 494; 15 B., 141; 12 B., 460; 16 How. P. R., 99.

§ 2. In the construction of every instrument creating or conveying, or authorizing the creation or conveyance of, any estate or interest in lands, it shall be the duty of courts of justice, to carry into effect the intent of the parties, so far as such intent can be collected from the whole instrument, and is consistent with the rules of law.

Duty of courts in construing conveyances.

8 N. Y., 539; 32 B., 45; 13 B., 127; 5 B., 103; 2 B., 368; 22 W., 489; 9 Pal., 116; 1 S. Ch., 275; 3 S. S. C., 110; 3 Du., 554; 20 How. P. R., 321; 11 Ab., 37.

§ 3. The title of a purchaser in good faith and for a valuable consideration, from the heirs at law of any person who shall have died seised of real estate, shall not be defeated or impaired, by virtue of any devise made by such person, of the real estate so purchased, unless the will or codicil contain-

Wills of real estate to be proved and (749) recorded within four years, except when

TITLE 5.
devisee under disability, or will has been concealed.

ing such devise, shall have been duly proved as a will of real estate, and recorded in the office of the surrogate having jurisdiction, or of the register of the court of chancery where the jurisdiction shall belong to that court, within four years after the death of the testator: except,

1. Where the devisee shall have been within the age of twenty-one years, or insane, or imprisoned, or a married woman, or out of the state, at the time of the death of such testator: or,

2. Where it shall appear, that the will or codicil containing such devise, shall have been concealed by the heirs of such testator, or some one of them:

In which several cases, the limitation contained in this section shall not commence, until after the expiration of one year from the time when such disability shall have been removed, or such will or codicil shall have been delivered to the devisee or his representative, or to the proper surrogate.

Laws of 1830, ch. 320, § 12.

Mortgages on lands inherited or devised, by whom to be paid.

§ 4. Whenever any real estate, subject to a mortgage executed by any ancestor or testator, shall descend to an heir, or pass to a devisee, such heir or devisee shall satisfy and discharge such mortgage, out of his own property, without resorting to the executor or administrator of his ancestor, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

28 B., 429; 27 B., 45, 620; 10 Pai., 163; 3 Pai., 404; 9 Pai., 454; 11 Pai., 269.

Preference to mortgages for purchase money.

§ 5. Whenever lands are sold and conveyed, and a mortgage is given by the purchaser at the same time, to secure the payment of the purchase money, or any part thereof, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser.

1 R. L., 375, § 15; 23 B., 125; 3 S. S. C., 118.

Presumption of death in certain cases.

§ 6. If any person, upon whose life any estate in lands or tenements shall depend, shall remain beyond sea, or shall absent himself, in this state or elsewhere, for seven years together, such person shall be accounted naturally dead, in any action concerning such lands or tenements, in which his death shall come in question, unless sufficient proof be made in such case, of the life of such person.

1 R. L., 103, § 1; 13 How. P. R., 120; 3 Ab., 224; 1 B. Ch., 462.

Liability of guardians, &c., holding over after their estates have ceased.

§ 7. Every person, who, as guardian or trustee for an infant, and every husband seised in right of his wife only, and every other person having an estate determinable upon any life or lives, who, after the determination of such particular estate, without the express consent of the party immediately entitled after such determination, shall hold over and continue in possession of any lands, tenements or hereditaments, shall be adjudged to be a trespasser; and every person and his executors and administrators, who shall be entitled to such lands,

tenements or hereditaments, upon the determination of such particular estates, may recover in damages against every such person so holding over, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession.

1 R. L., 167, § 7; 14 N. Y., 64, 430.

§ 8. A person seised of an estate in remainder or reversion, may maintain an action of waste or trespass, for any injury done to the inheritance, notwithstanding any intervening estate for life or years. Remedies of reversioners, &c.

1 R. L., 527, § 33; 29 B., 15; 13 J. R., 268; 11 J. R., 429.

§ 9. One joint tenant or tenant in common, and his executors or administrators, may maintain an action of account, or for money had and received, against his co-tenant for receiving more than his just proportion; and the like action may be maintained by them against the executors or administrators of such co-tenant. Remedies of joint-tenants, &c.

1 R. L., 90, § 2; 20 B., 447; 18 B., 265; 1 B., 506; 5 Cow., 188.

§ 10. The terms "real estate," and "lands," as used in this Chapter, shall be construed as co-extensive in meaning with lands, tenements and hereditaments. "Real estate" and "lands" defined.

2 N. Y., 376.

§ 11. None of the provisions of this Chapter, except those converting formal trusts into legal estates, shall be construed as altering or impairing any vested estate, interest or right; or as altering or affecting the construction of any deed, will or other instrument, which shall have taken effect at any time before this Chapter shall be in force as a law. Vested rights, and construction of instruments, not to be affected.

32 B., 429; 8 Pal., 304.

CHAP. II.

Of Title to Real Property by Descent.

(Took effect January 1, 1880.)

- SEC. 1. General rule as to the order in which real estate shall descend.
2. Rule as to lineal descendants in equal degrees of consanguinity.
3. Rule when any children are living and any have died leaving descendants.
4. Rule to apply to all descendants of unequal degrees.
5. In what cases inheritance to go to father.
6. When inheritance to go to mother.
7. When collateral relatives to inherit; rule if there are several of equal degrees.
8. Brothers and sisters and their descendants, to inherit.
9. Rule to apply to all other direct lineal descendants of unequal degrees.
10. Brothers and sisters of father, and their descendants, when to inherit.
11. When brothers and sisters of mother, and their descendants, to inherit.
12. In what case brothers and sisters of mother, and their descendants, to be preferred.
13. When brothers and sisters of father and mother, to inherit equally.
14. When mother of illegitimate intestate, and her descendants, to inherit.
15. Rule as to relatives of the half blood.

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- SEC. 16. In cases not provided for, rules of common law to prevail.
 17. Rule when but one heir; when several, to hold as tenants in common.
 18. Posthumous descendants and relatives, to inherit as if born in life of intestate.
 19. Illegitimate children and relatives, not to inherit.
 20. This Chapter not to affect curtesy, or dower, or limitations.
 21. Descent of estates in trust.
 22. Alienism of ancestor not to preclude inheritance.
 23. Advancement, if equal to share of an heir, to be set off against it.
 24. If not equal, to be deducted, so that all the shares may be equal.
 25. Value of advancement, how ascertained.
 26. Certain expenses and gifts, not to be deemed advancements.
 27. Definition of terms "real estate" and "inheritance."
 28 & 29. Construction of certain expressions used in this Chapter.

General rule as to the order in which real estate shall descend.

§ 1. After this Chapter shall take effect, the real estate of every person, who shall die without devising the same, shall descend in manner following:

1. To his lineal descendants:
2. To his father:
3. To his mother: and
4. To his collateral relatives:

Subject in all cases to the rules and regulations herein after prescribed.

2 Denio, 9.

Lineal descendants being in equal degrees.

§ 2. If the intestate shall leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate, the common degree of consanguinity may be.

1 R. L., 52, § 3, first rule.

Children living, and descendants of dead children.

§ 3. If any of the children of such intestate be living, and any be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as shall have died; so that each child who shall be living, shall inherit such share as would have descended to him, if all the children of the intestate who shall have died leaving issue, had been living; and so that the descendants of each child who shall be dead, shall inherit the share, which their parent would have received if living.

1 R. L., 52, § 3, second rule; 3 Ed., 361.

Rule in last section to apply to all descendants of unequal degrees.

§ 4. The rule of descent prescribed in the last section, shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, shall be of unequal degrees of consanguinity to the intestate; so that those who are in the nearest degree of consanguinity, shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity, who shall have died leaving issue, been living; and so that the issue of the descendants who shall have died, shall respectively take the shares, which their parents, if living, would have received.

When father to inherit.

§ 5. In case the intestate shall die without lawful descendants, and leaving a father, then the inheritance shall go to

such father, unless the inheritance came to the intestate, on the part of his mother, and such mother be living: but if such mother be dead, the inheritance descending on her part shall go to the father for life and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided. If there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

1 R. L., 52, § 3, third rule; Laws of 1830, ch. 320, § 13.

§ 6. If the intestate shall die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother, and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance herein after provided. If the intestate in such case, shall leave no brother or sister, nor any descendants of any brother or sister, the inheritance shall descend to the mother in fee.

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When mother to inherit for her life.

When to inherit in fee.

§ 7. If there be no father or mother, capable of inheriting the estate, it shall descend, in the cases herein after specified, to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate, the common degree of consanguinity may be.

Collateral relatives.

Rule when all of different degrees.

1 R. L., 52, § 3, fourth and fifth rules; 31 B., 658; 23 B., 301.

§ 8. If all the brothers and sisters of the intestate be living, the inheritance shall descend to such brothers and sisters; if any of them be living, and any be dead, then to the brothers and sisters, and every of them who are living, and to the descendants of such brothers and sisters as shall have died; so that each brother or sister who shall be living, shall inherit such share as would have descended to him or her, if all the brothers and sisters of the intestate, who shall have died leaving issue, had been living; and so that such descendants shall inherit the share, which their parent would have received, if living.

Brothers and sisters.

Their descendants.

31 B., 658; 21 W., 130; 10 Pai., 148; 5 S. S. C., 418.

§ 9. The same law of inheritance, prescribed in the last section, shall prevail, as to the other direct lineal descendants of every brother and sister of the intestate, to the remotest degree, whenever such descendants are of unequal degrees.

Rule if such descendants are of unequal degrees.

10 Pai., 148; 4 Pai., 340.

§ 10. If there be no heir entitled to take under either of the preceding sections, the inheritance, if the same shall have come to the intestate on the part of his father, shall descend,

Brothers and sisters of father, and their descendants.

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living:

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2. If any be living, and any shall have died leaving issue, then to such brothers and sisters as shall be living, and to the descendants of such of the said brothers and sisters as shall have died:

3. If all such brothers and sisters shall have died, then to their descendants:

In all cases, the inheritance shall descend in the same manner, as if all such brothers and sisters, had been the brothers and sisters of the intestate.

14 N. Y., 235; 10 Pai., 148; 4 Pai., 340.

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Brothers and sisters of mother and their descendants.

§ 11. If there be no brothers and sisters, or any of them, of the father of the intestate, and no descendants of such brothers and sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as shall have died, or if all shall have died, then to their descendants, in the same manner, as if all such brothers and sisters had been the brothers and sisters of the father.

In what case brothers and sisters of mother, and their descendants, to be preferred to those of father.

§ 12. In all cases not provided for by the preceding sections, where the inheritance shall have come to the intestate on the part of his mother, the same, instead of descending to the brothers and sisters of the intestate's father, and their descendants, as prescribed in the preceding tenth section, shall descend to the brothers and sisters of the intestate's mother, and to their descendants, as directed in the last preceding section; and if there be no such brothers and sisters, or descendants of them, then such inheritance shall descend to the brothers and sisters and their descendants, of the intestate's father, as before prescribed.

1 R. L., 52, § 3, 3d rule.

When brothers and sisters of both father and mother, &c., to inherit equally.

§ 13. In cases where the inheritance has not come to the intestate, on the part of either the father or mother, the inheritance shall descend to the brothers and sisters both of the father and mother of the intestate, in equal shares, and to their descendants, in the same manner as if all such brothers and sisters, had been the brothers and sisters of the intestate.

Mother, &c., of illegitimate intestate.

§ 14. In case of the death, without descendants, of an intestate who shall have been illegitimate, the inheritance shall descend to his mother; if she be dead, it shall descend to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate.

23 B., 32.

Relatives of the half blood.

§ 15. Relatives of the half blood shall inherit equally with those of the whole blood in the same degree; and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood; unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors; in which case, all those who are not of the blood of such ancestor, shall be excluded from such inheritance.

14 N. Y., 235; 31 B., 658; 1 Pai., 562; 5 S. S. C., 418.

§ 16. In all cases not provided for by the preceding rules, the inheritance shall descend according to the course of the common law.

1 R. L., 52, § 3, 5th rule.

§ 17. Whenever there shall be but one person entitled to inherit, according to the provisions of this Chapter, he shall take and hold the inheritance solely; and whenever an inheritance, or a share of an inheritance, shall descend to several persons, under the provisions of this Chapter, they shall take as tenants in common, in proportion to their respective rights.

6 H., 637.

§ 18. Descendants and relatives of the intestate, begotten before his death, but born thereafter, shall in all cases inherit in the same manner, as if they had been born in the lifetime of the intestate, and had survived him.

1 R. L., 54, § 5; 2 B., 251.

§ 19. Children and relatives who are illegitimate, shall not be entitled to inherit, under any of the provisions of this Chapter.

§ 20. The estate of a husband as tenant by the curtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of this Chapter; nor shall the same affect any limitation of any estate by deed or will.

1 R. L., 54, § 4; 28 B., 344; 15 How. P. R., 595.

§ 21. Real estate held in trust for any other person, if not devised by the person for whose use it is held, shall descend to his heirs, according to the provisions of this Chapter.

1 R. L., 74, § 4.

§ 22. No person capable of inheriting under the provisions of this Chapter, shall be precluded from such inheritance, by reason of the alienism of any ancestor of such person.

13 N. Y., 535; 5 N. Y., 274; 3 B. Ch., 446; 21 W., 130; 3 S. S. C., 81; 7 W., 336.

§ 23. If any child of an intestate shall have been advanced by him, by settlement or portion of real or personal estate, or of both of them, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal estate of such intestate, descendible to his heirs, and to be distributed to his next of kin, according to law; and if such advancement be equal or superior, to the amount of the share, which such child would be entitled to receive, of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share, in the real and personal estate of the intestate.

1 R. L., 313, § 16; 3 S. Ch., 127; 4 Ab., 3; 13 B., 252.

§ 24. But if such advancement be not equal to such share, such child and his descendants shall be entitled to receive so much only, of the personal estate, and to inherit so much only, of the real estate of the intestate, as shall be sufficient

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Common
law when to
prevail.

Rule as to
one heir.

Several
heirs, how
to hold.

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Posthu-
mous de-
scendants
and rela-
tives.

Illegitimate
children
and rela-
tives.

Certain es-
tates, &c.,
not to be
affected.

Estates in
trust.

Alienism of
ancestor.

When ad-
vancement
to be set off.

When to be
deducted.

CHAP. II.

to make all the shares of the children, in such real and personal estate and advancement, to be equal as near as can be estimated.

3 S. Ch., 127.

Value of advancement.

§ 25. The value of any real or personal estate so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise such value shall be estimated, according to the worth of the property when given.

3 S. Ch., 127.

Expenses, &c., not advancements

§ 26. The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement.

10 B., 72.

Terms "real estate" and "inheritances" defined.

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§ 27. The term "real estate," as used in this Chapter, shall be construed to include every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seised or possessed thereof, or in any manner entitled thereto, and except leases for years, and estates for the life of another person; and the term "inheritance," as used in this Chapter, shall be understood to mean real estate, as herein defined, descended according to the provisions of this Chapter.

Construction of certain expressions.

§ 28. Whenever, in the preceding sections, any person is described as living, it shall be understood that he was living at the time of the death of the intestate, from whom the descent came; and whenever any person is described as having died, it shall be understood, that he died before such intestate.

Meaning of certain other expressions.

§ 29. The expressions used in this Chapter, "where the estate shall have come to the intestate, on the part of the father," or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate, by devise, gift, or descent from the parent referred to, or from any relative of the blood of such parent.

CHAP. III.

Of the Proof and Recording of Conveyances of Real Estate, and the Cancelling of Mortgages.

(Took effect January 1, 1830.)

- SEC. 1. Conveyances where to be recorded; consequence of omission.
2. Deeds and mortgages to be recorded in different books.
3. Defeasances, of deeds to be recorded with them.
4. Officers authorised to take proof, &c. of deeds.
5. Ambassadors, consuls. in Europe, may take proofs.
6. In Great Britain. &c. consuls, &c. may take proof.
7. Proofs, how certified; effect thereof.
8. Proofs, &c. before special commissioners appointed by chancery.

SEC. 9. Identity to be known or proved.

10. Married woman in this state, to be examined, &c.
11. Proof of conveyances by married woman out of this state.
12. Proof of deeds by subscribing witness.
13. When and how witnesses to deeds, compelled to testify concerning them.
14. Penalty and proceedings on refusal, to appear or to testify.
15. Certificate of proof, to be endorsed on deed.
16. Conveyances so proved and certified, evidence and entitled to be recorded.
17. Record and transcript, evidence; proof may be contested.
18. Certificates when and how to be authenticated.
19. Last section not to apply to deeds of agents of certain estates.
20. Certificates to be recorded with conveyance.
21. Conveyances by treasurer of Connecticut, how verified.
22. This Chapter not to affect conveyances heretofore proved.
23. Conveyances heretofore executed, but not proved, how to be proved.
24. Conveyances to be recorded in order of delivery.
25. Entry of time of recording, to be made, and endorsed.
26. Transcripts of records how to be verified.
27. Conveyances of lands out of this state, how proved.
28. Upon what proof mortgages, to be discharged.
29. Certificate of discharge and proof, &c. to be recorded.
30. When witnesses to conveyance dead, before whom it may be proved.
31. What proof to be made; matters to be stated in certificate.
32. Deed so proved, on being deposited, may be recorded.
33. Effect of recording and deposit, as evidence.
34. Punishment for recording deeds, without being proved.
35. Punishment for malfeasance in executing powers herein given.
36. Definition of term "real estate," as used in this Chapter.
37. Construction of the term "purchaser."
38. Meaning of term "conveyance."
39. Last section not to extend to powers of attorney.
40. Letter of attorney recorded not affected by revocation until recorded.
41. Recording assignment of mortgage not to be notice.
42. This Chapter not to extend to leases for life or years.
43. What provisions of this Chapter apply to register in New-York.

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§ 1. Every conveyance of real estate, within this state, hereafter made, shall be recorded in the office of the clerk of the county where such real estate shall be situated; and every such conveyance not so recorded, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

Conveyances to be recorded in county clerk's office.
[Wills to be recorded, see ch. 1, title 5, § 2.]

- 1 R. L., 369, 372; Laws of 1819, 269; of 1821, 127; of 1822, 261, 284; of 1823, 412; 13 N. Y., 520; 8 N. Y., 27, 450; 29 B., 507; 25 B., 399; 22 B., 65; 20 B., 392; 18 B., 202; 16 B., 264; 6 B., 67, 349, 346; 15 W., 588; 8 W., 620; 6 W., 213; 3 W., 180; 2 B. Ch., 158; 6 H., 473; 2 H., 650; 8 Pal., 547; 4 Pal., 215; 3 Pal., 437; 1 S. Ch., 425; 1 Ed., 653; 2 J. C. R., 604; 2 J. R., 509.

§ 2. Different sets of books shall be provided, by the clerks of the several counties, for the recording of deeds and mortgages; in one of which sets, all conveyances absolute in their terms, and not intended as mortgages, or as securities, in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded.

Different books for deeds and mortgages.

CHAP. 3.
Certain
deeds to be
deemed
mortgages.

Defeasances
&c., to be
recorded.

§ 3. Every deed conveying real estate, which, by any other instrument in writing, shall appear to have been intended, only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit, such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time.

1 R. L., 372, § 3; Laws of 1822, 262, § 3; 16 B., 439; 5 B., 652; 3 W., 208; 2 Cow., 324; 5 Pal., 111; 1 Pal., 553; Cl. Ch., 167; 6 J. G. R., 417.

Officers
who may
take proofs,
&c., of
deeds.

§ 4. To entitle any conveyance hereafter made, to be recorded by any county clerk, it shall be acknowledged by the party or parties executing the same, or shall be proved by a subscribing witness thereto, before any one of the following officers:

In this state

1. If acknowledged or proved within this state; the chancellor, justices of the supreme court, circuit judges, supreme court commissioners, judges of county courts, mayors and recorders of cities, or commissioners of deeds; but no county judge, or commissioner of deeds for a county or city, shall take any such proof or acknowledgment, out of the city or county, for which he was appointed:

(757)

In any
other part
of United
States.

2. If acknowledged or proved out of this state, and within the United States; the chief justice and associate justices of the supreme court of the United States, district judges of the United States, the judges or justices of the supreme, superior or circuit court, of any state or territory, within the United States, and the chief judge, or any associate judge, of the circuit court of the United States, in the district of Columbia; but no proof or acknowledgment, taken by any such officer, shall entitle a conveyance to be recorded, unless taken within some place or territory, to which the jurisdiction of the court to which he belongs, shall extend.

1 R. L., 369, § 1; by Laws of 1848, ch. 195, as amended by Laws of 1856, ch. 61, provision is made for acknowledgments out of this state; see also Laws of 1858, ch. 259; by Laws of 1840, ch. 238; 1829, ch. 222; 1845, ch. 109, the power is conferred on justices of the peace in this state, any mayor in the U. S., any U. S. consul abroad and the judges in Canada; 6 N. Y., 422; 5 N. Y., 36; 8 B., 562; 5 H., 574; 6 Pal., 60; 11 J. R., 435; 4 J. R., 162.

Ambassa-
dors, con-
suls, &c., in
Europe, &c.

§ 5. If the party or parties executing such conveyance, shall be, or reside, in any state or kingdom in Europe, or in North, or South America, the same may be acknowledged or proved before any minister plenipotentiary, or any minister extraordinary, or any *charge des affaires*, of the United States, resident and accredited within such state or kingdom. If such parties be or reside in France, such conveyance may be acknowledged or proved before the consul of the United States, appointed to reside at Paris; and if such parties be or reside in Russia,

such conveyance may be acknowledged or proved before the consul of the United States appointed to reside at St. Petersburg.

Laws of 1816, 118.

§ 6. If the party to such conveyance be, or reside, within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, the same may be acknowledged or proved before the mayor of the city of London, the mayor or chief magistrate of the city of Dublin, or the provost or chief magistrate of the city of Edinburgh, or before the mayor or chief magistrate of Liverpool, or before the consul of the United States appointed to reside at London.

Mayors,
consuls,
&c., in
Great Brit-
ain.

1 R. L., 370, § 3; Laws of 1817, 58.

§ 7. Such proof or acknowledgment, duly certified under the hand and seal of office, of such consuls, or of the said mayors or chief magistrates respectively, or of such minister or *charge des affaires*, shall have the like force and validity, as if the same were taken, before a justice of the supreme court of this state.

Proofs, &c.,
how certi-
fied in for-
eign
countries.

Laws of 1816, 118; 1 R. L., 370; Laws of 1817, 58.

§ 8. Every such conveyance, heretofore made, or hereafter to be made, may be acknowledged or proved, without the United States, before any person specially authorised for that particular purpose, by a commission under the seal of the court of chancery of this state, to be issued to any reputable person residing in, or going to, the country where such proof or acknowledgment is to be taken; and the acknowledgment or proof so taken, shall be of the like force and validity, as if the same were taken before a justice of the supreme court of this state.

Proofs, &c.,
taken by
special com-
mission
from chan-
cery.

Laws of 1817, 58, § 1 & 2; see Laws of 1840, ch. 290.

§ 9. No acknowledgment of any conveyance having been executed, shall be taken by any officer, unless the officer taking the same, shall know, or have satisfactory evidence, that the person making such acknowledgment, is the individual described in, and who executed such conveyance.

[758]
Requisites
for acknow-
ledgments.

1 R. L., 369, § 1 & 2; 25 W., 274; 19 W., 442; 13 W., 541; 4 W., 563; 2 Cow., 552; 11 J. R., 434; 6 J. R., 149; 1 J. R., 498.

§ 10. The acknowledgment of a married woman residing within this state, to a conveyance purporting to be executed by her, shall not be taken, unless in addition to the requisites contained in the preceding section, she acknowledge, on a private examination, apart from her husband, that she executed such conveyance, freely, and without any fear or compulsion of her husband; nor shall any estate of any such married woman, pass, by any conveyance not so acknowledged.

It when
made by
married wo-
men in this
state.

4 N. Y., 15; 20 B., 371; 17 B., 660; 15 B., 337; 13 B., 54; 5 B., 227; 2 B. Ch., 268; 10 Pal., 346; 3 Pal., 121; 8 Cow., 283; 20 J. R., 201; 16 J. R., 110; 7 J. R., 86; 4 Ed., 73; 12 How. P. R., 441.

CHAP. 3.
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[757]
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other part
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Mayors,
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§ 7. Such proof or acknowledgment, duly certified under the hand and seal of office, of such consuls, or of the said mayors or chief magistrates respectively, or of such minister or *charge des affaires*, shall have the like force and validity, as if the same were taken, before a justice of the supreme court of this state.

Laws of 1816, 118; 1 R. L., 370; Laws of 1817, 58.

Proofs, &c.,
how certi-
fied in for-
eign
countries.

§ 8. Every such conveyance, heretofore made, or hereafter to be made, may be acknowledged or proved, without the United States, before any person specially authorised for that particular purpose, by a commission under the seal of the court of chancery of this state, to be issued to any reputable person residing in, or going to, the country where such proof or acknowledgment is to be taken; and the acknowledgment or proof so taken, shall be of the like force and validity, as if the same were taken before a justice of the supreme court of this state.

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taken by
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[755]
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16 J. R., 110; 7 J. R., 86; 4 Ed., 73; 12 How. P. R., 441.

CHAP. 8.
Married
women
residing
out of this
state.

§ 11. When any married woman, not residing in this state, shall join with her husband, in any conveyance of any real estate, situated within this state, the conveyance shall have the same effect as if she were sole; and the acknowledgment or proof, of the execution of such conveyance by her, may be the same as if she were sole.

Proof by
subscribing
witness.

§ 12. The proof of the execution of any conveyance, shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in, and who executed such conveyance; and such proof shall not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to such instrument.

13 W., 541; 1 J. R., 498; 7 W., 366; 2 W., 555.

When and
how wit-
nesses to
deeds, com-
pelled to
testify con-
cerning
them.

§ 13. Upon the application of any grantee, in any conveyance, his heirs or personal representatives, or of any person claiming under them, verified by the oath of the applicant, that any witness to the conveyance, residing in the county where such application is made, refuses to appear and testify, touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorised to take the acknowledgment or proof of conveyances, except a commissioner of deeds, may issue a subpoena requiring such witness to appear and testify before such officer, touching the execution of such conveyance.

Penalty,
&c., for re-
fusal to ap-
pear to tes-
tify.

§ 14. Every person, who being served with such subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured, one hundred dollars; and may also be committed to prison by the officer who issued such subpoena, there to remain without bail, and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid.

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Certificate
of proof,
&c., to be
endorsed on
deed; its
contents.

§ 15. Every officer who shall take the acknowledgment or proof, of any conveyance, shall endorse a certificate thereof, signed by himself, on the conveyance; and in such certificate, shall set forth the matters herein before required to be done, known, or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

1 R. L., 369, § 1 & 2; 20 B., 371; 13 B., 54; 8 B., 562; 24 W., 92; 13 W., 541; 1 W., 406; Hop., 267; 2 Cow., 552; 4 Ed., 73.

Effect of
proof, &c.

§ 16. Every conveyance, acknowledged, or proved, and certified in the manner above prescribed, by any of the officers before named, may be read in evidence, without further proof thereof, and shall be entitled to be recorded.

1 R. L., 369, § 5; 25 W., 274.

Record
&c., evi-
dence.

§ 17. The record of a conveyance duly recorded, or a tran-

script thereof, duly certified, may also be read in evidence, with the like force and effect as the original conveyance. Neither the certificate of the acknowledgment, or of the proof, of any conveyance, nor the record, or transcript of the record, of such conveyance, shall be conclusive, but may be rebutted, and the force and effect thereof, may be contested by any party affected thereby. If the party contesting the proof of a conveyance, shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such conveyance, nor the record thereof, shall be received in evidence until established by other competent proof.

Certificate not conclusive.

When not to be evidence.

5 H., 36; 2 H., 54; 3 Du., 95.

§ 18. Where any conveyance shall be proved or acknowledged, before any judge of the county courts, not of the degree of counsellor at law, in the supreme court, or before any commissioner of deeds appointed for any county or city, it shall not be entitled to be read in evidence, or to be recorded, in any other county than that in which such judge or commissioner shall reside, unless in addition to the preceding requisites, there shall be subjoined to the certificate of proof or acknowledgment, signed by such judge or commissioner, a certificate under the hand and official seal of the clerk of the county, in which such judge or commissioner resides, specifying that such judge or commissioner was, at the time of taking such proof or acknowledgment, duly authorised to take the same, and that the said clerk is well acquainted with the handwriting of such judge or commissioner, and verily believes, that the signatures to the said certificate of proof or acknowledgment, is genuine.

Certificates of certain judges and of commissioners of deeds, to be authenticated in certain cases by county clerk.

Laws of 1818, 44, § 5 & 8; 6 N. Y., 422; 1 N. Y., 77; 23 B., 559; 3 W., 180.

§ 19. The last section shall not apply to any conveyance executed by any agent for the Holland Land Company, or by any agent of the Pulteney estate, lawfully authorised to convey real estate.

Last section qualified.

§ 20. The certificate of the proof or acknowledgment of every conveyance, and the certificate of the genuineness of the signature of any judge or commissioner, in the cases where such last mentioned certificate is required, shall be recorded, together with the conveyance, so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such conveyance, nor the transcript thereof, shall be read, or received in evidence.

Certificates to be recorded with conveyance.

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Effect of omission.

Laws of 1818, 44, § 5.

§ 21. All conveyances of real estate, executed since the tenth day of March, one thousand eight hundred and twenty-five, or hereafter to be executed, by the treasurer of the state of Connecticut, which shall be acknowledged by him before the secretary of state of the state of Connecticut, and the

Conveyances by Treasurer of Connecticut.

CHAP. 8.

acknowledgment of which, shall be certified by the said secretary, under the seal of the said state, in the manner herein prescribed, may be recorded in the proper offices within this state, without further proof thereof; and every such conveyance, or the record thereof, or the transcript of such record, duly certified, may be read in evidence, as if such conveyance had been acknowledged before a justice of the supreme court.

Laws of 1825, 35.

This chapter not to affect conveyances heretofore proved, &c.

§ 22. Every conveyance of any real estate within this state, heretofore executed, and heretofore acknowledged or proved and certified, in such manner as to be entitled to be read in evidence, or recorded, under the laws now in force, but which has not been so recorded, shall be entitled to be read in evidence, in all courts, and to be recorded in the proper office, in the same manner, and with the like effect, as if this Chapter had not been passed.

3 Du., 73.

Existing conveyances not proved.

§ 23. Every such conveyance, not already proved or acknowledged, may be proved or acknowledged, in the same manner as conveyances hereafter executed, and when so proved, acknowledged or recorded, shall have the like effect.

Order of recording, &c.

§ 24. Every conveyance entitled by law to be recorded, shall be recorded in the order, and as of the time, when the same shall be delivered to the clerk for that purpose, and shall be considered as recorded, from the time of such delivery.

1 R. L., 370, § 5; 8 Cow., 261.

Time of recording to be entered and endorsed on deed.

§ 25. The recording officer shall make an entry in the record, immediately after the copy of every conveyance recorded, specifying the time of the day, month and year, when the said conveyance was recorded, and shall endorse upon every conveyance recorded by him, a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

Transcripts of records, how to be verified.

§ 26. To entitle the transcript of any record of such conveyance, recorded as aforesaid, and of the certificates of the acknowledgment or proof thereof, and of the genuineness of any signature to such certificate, to be read in evidence, the same shall be certified to be a true copy of such record, by the clerk of the county in whose custody the same shall be, under the seal of the court of common pleas of the county of which he is clerk, or by the register of the city and county of New-York, when such record shall be in his custody.

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1 R. L., 370, § 5. See Laws of 1839, ch. 295; 1843, ch. 210; 1845, ch. 110; 1846, ch. 182; 1851, ch. 277.

Proof, &c., of conveyances of lands out of this state.

§ 27. Every conveyance of real estate situated without this state, heretofore made, or hereafter made, and which shall be acknowledged or proved, in the manner prescribed by the laws of this state, in relation to conveyances of lands within this state, may be read in evidence in any court without further proof thereof, in the same manner and with the same

effect, as if such conveyance related to real estate within this state; but this section shall not be construed to prevent the reading in evidence, of any conveyance of lands within any other of the United States, which shall have been duly authenticated, according to the laws of such state, so as to be read in evidence in the courts thereof.

Laws of 1817, 58, § 2.

§ 28. Any mortgage that has been registered or recorded, or that may hereafter be recorded, shall be discharged upon the record thereof, by the officer in whose custody it shall be, whenever there shall be presented to him, a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified, as herein before prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied and discharged.

Discharge
of record,
&c., of
mortgages.

1 R. L., 373, § 4.

§ 29. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length: and a reference shall be made to the book and page, containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof.

Certificate
of dis-
charge, &c.,
to be re-
corded.
Reference
in minute
of discharge

§ 30. Where the witnesses to any conveyance, authorised by this Chapter to be recorded, shall be dead, then the same may be proved before any officer authorised to take the proof and acknowledgment of deeds, other than commissioners of deeds, and county judges not of the degree of counsel in the supreme court.

Proof of
deed when
witnesses
are dead.

§ 31. The proof of the execution of any conveyance in such case, shall be made by satisfactory evidence of the death of all the witnesses thereto, and of the hand-writing of such witnesses, or any one of them, and of the grantor; all which evidence, with the names and places of residence of the witnesses examined before him, shall be set forth by the officer taking the same, in his certificate of such proof.

What proof
to be made,
how certi-
fied.

§ 32. Any conveyance proved and certified, pursuant to the two last sections, may be recorded in the proper office, if the original deed be at the same time deposited in the same office, there to remain, for the inspection of all persons desiring to examine the same.

When deed
to be re-
corded.

§ 33. The recording and deposit of any conveyance, proved and certified according to the provisions of the three last sections, shall be constructive notice of the execution of such conveyance, to all purchasers subsequent to such recording; but such proof, recording, or deposit, shall not entitle such conveyance, or the record thereof, or the transcript of such record, to be read in evidence.

Effect of
recording
and depo-
sit.
[762]

20 B., 404.

§ 34. No clerk of any city or county, shall record any conveyance, by which any interest in real estate is, or may be

Punish-
ment for
recording

CHAP. 2.
deeds, &c.,
without
being
proved, &c.

in any way affected, unless the same shall have been duly acknowledged or proved, and such acknowledgment or proof duly certified according to law; and any such officer offending herein, shall be adjudged guilty of a misdemeanor, and on conviction, shall be subject to fine and imprisonment.

1 R. L., 371, § 8.

Punish-
ment of
judges,
clerks, &c.,
for malfea-
sance.

§ 35. Every judge, officer, or other person, within this state, authorised to take the acknowledgment or proof of any conveyance, and every clerk of any county, or his deputy, who shall be guilty of any malfeasance, or fraudulent practice in the execution of the duties prescribed to them by law, in relation to the taking, or certifying, the proof or acknowledgment, or the recording, or certifying, any record of any such conveyance, mortgage, or instrument in writing, or in relation to the cancelling of any mortgage, shall, upon conviction, be adjudged guilty of a misdemeanor, and be subject to punishment by fine and imprisonment, and shall also be liable in damages to the party injured.

Laws of 1823, 15.

Term "real
estate" de-
fined.

§ 36. The term "real estate," as used in this Chapter, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real, except leases for a term not exceeding three years.

13 N. Y., 152.

Term "pur-
chaser."

§ 37. The term "purchaser," as used in this Chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration, and also every assignee of a mortgage, or lease, or other conditional estate.

1 S. Ch., 438.

Term "con-
veyance."

§ 38. The term "conveyance," as used in this Chapter, shall be construed to embrace every instrument in writing, by which any estate, or interest in real estate is created, aliened, mortgaged or assigned; or by which the title to any real estate, may be affected in law or equity; except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands.

25 B., 394; 1 W., 485.

Last section
not to in-
clude pow-
ers of at-
torney; but
they and
contracts
for land,
may be
proved and
recorded.

§ 39. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when proved or acknowledged, in the manner prescribed in this Chapter, may be recorded in the clerk's office of any county, in which any real estate, to which such power or contract relates may be situated; and when so proved or acknowledged, and the record thereof when recorded, or the transcript of such record,

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Effect of
record, &c.

may be read in evidence, in the same manner, and with the like effect, as a conveyance recorded in such county.

10 Pai., 346.

§ 40. No letter or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation, be also recorded in the same office, in which the instrument containing the power was recorded.

Letters recorded, how revoked.

See Laws of 1835, ch. 275.

§ 41. The recording of an assignment of a mortgage, shall not be deemed, in itself, notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Record of assignment of mortgage, not notice, &c.

2 B. Ch., 84; 11 Pai., 37; 10 Pai., 413; 2 Cow., 288.

§ 42. The provisions of this Chapter shall not extend to leases for life or lives, or for years, in the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware and Schenectady.

Certain leases in counties named not affected.

Laws of 1823, 413, § 5.

§ 43. All the provisions of this Chapter, excepting the eighteenth section, conferring any powers, or imposing any duties, obligations or penalty upon a county clerk, shall extend and apply to the register of the city and county of New-York, in the same manner as if he were county clerk of the said county.

Register in New York.

4 Ab., 23.

See Laws of 1843, ch. 199; ch. 210; 1835, ch. 275; 1845, ch. 110; 1839, ch. 295; 1840, ch. 290; 1845, ch. 109; 1829, ch. 222; 1840, ch. 238.

CHAP. IV.

Of Title to Personal Property, in certain cases.

(Took effect January 1, 1880.)

TITLE 1.—Of limited partnerships.

TITLE 2.—Of promissory notes, and bills of exchange.

TITLE 3.—Of the interest of money.

TITLE 4.—Of accumulations of personal property, and of expectant estates in such property.

• TITLE I.

OF LIMITED PARTNERSHIPS.

- SEC. 1. For what purposes limited partnerships may be formed.
2. To consist of general and special partners; their liabilities.
3. General partners only, to transact business.
4. Certificate to be signed by all the partners; its contents.
5. Certificates to be acknowledged.

TITLE 1.

- Sec.**
6. In what counties to be filed and recorded.
 7. Affidavit also to be filed; its contents.
 8. Partnership when deemed formed; effect of false certificate.
 9. Terms of partnership how to be published.
 10. Affidavits of publication, where to be filed.
 11. Renewals, &c., of partnership, how to be made.
 12. Alterations, deemed dissolution of partnership.
 13. In what firm and names, business to be carried on.
 14. Suits to be in names of general partners.
 15. Special partner not to withdraw capital.
 16. When to refund interest received by him.
 17. Rights of special partners; restrictions upon them.
 18. Liability of general partners to account.
 19. Liability of partners guilty of fraud.
 20. Assignments, &c., in certain cases, void.
 21. Certain assignments, &c., of general partners, void.
 22. Certain acts of special partner to render him liable.
 23. Special partners not to claim as creditors on insolvency of firm.
 24. Dissolution by acts of partners, how made and published.

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Purposes
of limited
partner-
ships.

§ 1. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business, within this state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this Title shall not be construed to authorise any such partnership for the purpose of banking, or making insurance.

The different sections of this Title, except the tenth, and where otherwise noted, are taken, with variations, from the act of 1822, 259; 11 How. P. R., 392; 7 Pai., 585.

Liabilities
of general
and special
partners.

§ 2. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the fund, so contributed by him or them to the capital.

Business by
whom to be
transacted.

§ 3. The general partners, only, shall be authorised to transact business for the partnership except as provided in section seventeen, and no special partner shall be authorized to sign for the partnership or to bind the same.

Laws of 1857, ch. 414.

Certificate
to be signed
by all the
partners;
its contents

§ 4. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain,

1. The name or firm under which such partnership is to be conducted:
2. The general nature of the business intended to be transacted.
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special, partners, and their respective places of residence:
4. The amount of capital which each special partner shall have contributed to the common stock:

5. The period, at which the partnership is to commence, and the period, at which it will terminate.

10 Pal., 262; 5 H., 309.

§ 5. The certificate shall be acknowledged by the several persons signing the same, before the chancellor, a justice of the supreme court, a circuit judge, or a judge of the county courts; and such acknowledgment shall be made and certified in the same manner, as the acknowledgment of conveyances of land.

To be acknowledged

See Laws of 1837, ch. 129.

§ 6. The certificate so acknowledged and certified, shall be filed in the office of the clerk of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large, in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate, and of the acknowledgment thereof, duly certified by the clerk in whose office it shall be filed, under his official seal, shall be filed and recorded in like manner, in the office of the clerk of every such county.

When to be filed and recorded.

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§ 7. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums, specified in the certificate, to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash.

Affidavit to be filed.

5 H., 313; 2 Ab., 293.

§ 8. No such partnership shall be deemed to have been formed, until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed, as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership, shall be liable for all the engagements thereof, as general partners.

When partnership deemed formed.

Consequence of false certificate, &c.

6 H., 481; 5 H., 315.

§ 9. The partners shall publish the terms of the partnership when registered, for at least six weeks immediately after such registry, in two newspapers, to be designated by the clerk of the county in which such registry shall be made, and to be published in the senate district in which their business shall be carried on; and if such publication be not made, the partnership shall be deemed general.

Terms of partnership to be published.

Effect of omission.

6 H., 481; 3 D., 436; 24 W., 496.

§ 10. Affidavits of the publication of such notice, by the printers of the newspapers, in which the same shall be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

Proof of publication.

§ 11. Every renewal or continuance of such partnership, beyond the time originally fixed for its duration, shall be

Renewals &c., of partnership.

TITLE 1.

certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given, in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership.

dissolved
by altera-
tions.

When
deemed
general
partner-
ship.

§ 12. Every alteration which shall be made in the names of the general partners, in the nature of the business, or in the capital or shares thereof contributed, held or owned, or to be contributed, held or owned, by any of the special partners, and the death of any partners, whether general or special, shall be deemed a dissolution of the partnership, unless the articles of partnership shall specify that in such events the partnership shall be continued by the survivors, in which case it may be so continued, with the assent of the heirs or legal representatives of the deceased partner. And every such partnership which shall be carried on after such alteration shall have been made, or such death shall have occurred, shall be deemed a general partnership in respect to all business transacted after such alteration or death, except in case of a provision in the articles of partnership for the continuance of the business by the survivors as aforesaid, in which case the heirs or legal representatives of the deceased partner may succeed to the partnership rights of such deceased partner, and continue the business the same as if such partner had remained alive: provided, however, that one or more special partner or partners may be added to the partnership upon actually paying in an additional amount of capital, to be agreed upon by the general and special partners, and the alteration of the partnership by such additional special partners shall not make the partnership general, nor alter its name, nor work a dissolution, provided the general partners in the partnership name shall file an additional certificate with the clerk with whom the original certificate may have been filed, verified on oath by one of them, stating the names and residences of such additional special partners, and the amounts respectfully* contributed to the common stock by them. And any special partner, or the heirs and legal representatives of any such special partner deceased, may sell his interest in the partnership without working a dissolution thereof, or rendering the partnership general, provided a notice of such sale be filed within ten days thereafter with the clerk with whom such original certificate of partnership may have been filed, and the purchaser of such interest may thereupon become a special partner, with the same rights as an original special partner.

Laws of 1858, ch. 289; 11 N. Y., 100.

Names com-
posing firm.

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§ 13. The business of the partnership shall be conducted under a firm, in which the names of the general partners, only, shall be inserted, without the addition of the word "company," or any other general term; and if the name of

* So in the original engrossed bill.

any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

5 H., 309.

§ 14. Suits in relation to the business of the partnership, may be brought and conducted, by and against the general partners, in the same manner as if there were no special partners.

4 E. D. S., 208.

§ 15. No part of the sum, which any special partner shall have contributed to the capital stock, shall be withdrawn by him, or paid or transferred to him, in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits.

§ 16. If it shall appear, that by the payment of interest or profits to any special partner, the original capital has been reduced, the partner receiving the same, shall be bound to restore the amount necessary to make good, his share of capital, with interest.

Laws of 1827, 249; 1822, 259, § 11; 5 H., 313.

§ 17. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management. He may also loan money to, and advance, and pay money for the partnership, and may take and hold the notes, drafts, acceptances and bonds of, and belonging to the partnership, as security for the repayment of such moneys and interest, and may use and lend his name and credit, as security for the partnership in any business, and shall have the same rights and remedies in these respects as any other creditor might have. He may also negotiate sales, purchases, and other business for the partnership, but no business so negotiated shall be binding upon the partnership until approved by a general partner, excepting as herein mentioned; but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise. If he shall interfere, contrary to these provisions, he shall be deemed a general partner.

Laws of 1857, ch. 414; 5 H., 313; 4 Ab., 113.

§ 18. The general partners shall be liable to account to each other, and to the special partners, for their management of the concern, both in law and equity, as other partners now are, by law.

§ 19. Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable civilly to the party injured, to the extent of his damage; and shall also be liable to an indictment for a misdemeanor, punishable by fine or

TITLE 1.

Suits, in whose names.

Capital of special partner not to be withdrawn.

When he may receive interest.

When to refund interest.

Rights of special partners.

Restrictions.

General partners to account.

Punishment of partners for fraud.

TITLE 1.

imprisonment, or both, in the discretion of the court by which he shall be tried.

Certain
transfers
void.

§ 20. Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of, the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner, over other creditors of such partnership; and every judgment confessed, lien created, or security given, by such partnership, under the like circumstances, and with the like intent, shall be void, as against the creditors of such partnership.

9 Ab., 132.

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Certain
transfers,
&c., of their
property by
general
partners
void.

§ 21. Every such sale, assignment, or transfer of any of the property or effects of a general or special partner, made by such general or special partner, when insolvent, or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership; and every judgment confessed, lien created, or security given, by any such partner, under the like circumstances, and with the like intent, shall be void, as against the creditors of the partnership.

6 Pai., 581.

When special
partner to be-
come liable.

§ 22. Every special partner, who shall violate any provision of the two last preceding sections, or who shall concur in, or assent to, any such violation by the partnership or by any individual partner, shall be liable as a general partner.

When not
to claim as
creditor.

§ 23. In case of the insolvency or bankruptcy of the partnership, no special partner shall, except for claims contracted pursuant to section seventeen, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied.

Laws of 1857, ch. 414; 20 N. Y., 180, 6 Pai., 582; 24 B., 290.

Dissolu-
tion by acts
of partners.

§ 24. No dissolution of such partnership by the acts of the parties, shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the clerk's office in which the original certificate was recorded, and published once in each week for four weeks, in a newspaper printed in each of the counties where the partnership may have places of business, and in the state paper.

11 N. Y., 100; 12 B., 291; 6 Pai., 577.

See Laws of 1837, ch. 129; 1857, ch. 414; 1858, ch. 289.

TITLE II.

TITLE 2

OF PROMISSORY NOTES, AND BILLS OF EXCHANGE.

- SEC. 1. Effect of promissory notes payable to order or bearer.
 2. Same effect given to notes signed by an agent.
 3. Word "person," to extend to corporations.
 4. When actions by payees, endorsees and holders to be maintained.
 5. Effect of notes payable to order of maker or of fictitious person
 6. Acceptances to be in writing and signed.
 7. If acceptance on separate paper, when to bind acceptor.
 8. When unconditional promise to accept, to be deemed acceptance.
 9. Refusal to accept on bill, deemed refusal to accept.
 10. Rights of drawers on previous promise to accept.
 11. When destruction of bill or refusal to return it, deemed acceptance.
 12. When registry of inhabitants of New-York to be kept by clerk.
 13. Inhabitants to register names and places to which notices, &c. to be sent.
 14. Drafts may be presented, and notices served, at place designated.
 15. If registry not made, drafts may be presented to clerk.
 16. And notices may be served by leaving at post-office.
 17. When preceding provisions not to operate.
 18. Rates of damages on non-payment of bills of exchange.
 19. Damages in lieu of interest, &c.
 20. If bill payable in money of U. S., rate of exchange not to be regarded.
 21. If payable in foreign currency, amount due to depend on rate of exchange.
 22. Rate of damages on non-acceptance.
 23. Purchasers of bills only to recover damages herein allowed.

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§ 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable, as therein expressed; and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

Promissory notes payable to order or to bearer, negotiable.

Their effect

1 R. L., 151; 6 N. Y., 29; 2 Hilt., 527.

§ 2. Every such note, signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect, and be negotiable, as above provided.

Signature by agent.

§ 3. The word "person," in the two last preceding sections, shall be construed to extend to every corporation, capable by law of making contracts.

Corporations included.

23 B., 176; 5 D., 577.

§ 4. The payees and endorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Actions by payees, endorsees and holders.

§ 5. Such notes, made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity, as against the maker and all persons having knowledge of the facts, as if payable to bearer.

Effect when payable to order of maker, &c.

3 H., 115; 2 S. S. C., 138; 4 E. D. S., 85; 2 Du., 121.

TITLE 2
Acceptances to be in writing, &c.

§ 6. No person within this state shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself, or his lawful agent.

9 N. Y., 584; 8 N. Y., 398; 5 H., 413; 2 H., 583; 1 H., 84, 584; 5 Du., 377; 10 Ab., 59.

Effect of acceptance on separate paper.

§ 7. If such acceptance be written on a paper, other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

9 N. Y., 441.

Written promises to accept.

§ 8. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance, in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

9 N. Y., 441; 5 H., 432; 5 Du., 583; 17 W., 508.

Refusal to accept on bill.

§ 9. Every holder of a bill, presenting the same for acceptance may require that the acceptance be written on the bill. A refusal to comply with such request, shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

Rights of drawers in certain cases, not to be affected.

§ 10. The four last sections shall not be construed to impair the right of any person, to whom a promise to accept a bill, may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

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5 Du., 377, 583.

Destroying bill or refusal to return it, when acceptance.

§ 11. Every person, upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same.

In case of pestilence, in New York, registry of inhabitants to be kept by clerk.

§ 12. Whenever the board of health of the city of New-York, or any other competent authority, shall, by public notice, designate any portion or district of the said city as being the seat of any infectious or contagious disease, and declare communication with such portion or district dangerous, or shall prohibit such communication, it shall be the duty of the clerk of the said city and county, during the continuance of such disease in such district, to provide and keep in his office a book, for the purpose of registering in alphabetical order, the names, firms, and places of business of any inhabitant of the city, who shall desire such registry to be made.

Laws of 1826, 12, § 1 & 2.

Inhabitants to register their names, and places of business, &c.

§ 13. It shall be the duty of all persons and firms usually resident, or doing business, within such infected district, to register in the book so provided by the said clerk, their names or firms, with the place or places out of such infected

TITLE 2

district, but within the county of New-York, to which they may have removed the transaction of their business, or to which they may desire any notices to be sent or served, or any notes, drafts or bills, to be presented for acceptance or for payment. The sum of twenty-five cents may be claimed and received by the said clerk for every such registry; but the book in which the same shall be entered, shall be, at all times during office hours, open to public examination, free of all charges.

Fee of clerk.

Register may be examined gratis.

§ 14. During the continuance of any such disease in such infected district, all drafts, notes and bills which by law are required to be presented for acceptance or for payment, may be presented for such purpose at the place so designated in such registry; and all notices of non-acceptance and of non-payment, of any note, draft or bill, or of protest, for such non-acceptance or non-payment, may be served by leaving the same, at the place so designated.

Acceptance, &c., may be demanded.

Notices, &c., may be served at designated place.

§ 15. In case any person or firm, usually resident or doing business within such infected district, shall neglect to make and cause to be entered in the book so provided, the registry herein required, all notes, drafts or bills, which by law are required to be presented to such person or firm for acceptance or for payment, may be presented to the said clerk of the city and county of New-York, during the continuance of such disease, at any time during office hours, and demand of acceptance or payment thereof, may be made of the said clerk, to the same purpose and with the same effect, as if the same had been presented, and acceptance or payment demanded, of such person or firm, at their usual place of doing business.

If registry, not made, drafts, &c., may be presented to clerk.

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§ 16. In case of the omission to make the registry herein required, all notices of the non-acceptance or non-payment of any note, draft or bill, or of protest for such non-acceptance or non-payment, may be served on any person or firm, usually resident or doing business within such infected district, by leaving the same at the post-office for the said city of New-York; which service shall be as valid and effectual, as if the notices had been served personally, on such person, or one of such firm, at his or their usual place of doing business.

And notices, &c., may be left at post-office.

Laws of 1823, 268.

§ 17. Whenever proclamation shall be made by the board of health, or other proper authority of the city of New-York, that an infectious or contagious disease in any such infected district, has subsided, it shall be deemed to have subsided, for all the purposes contemplated in this Title.

When pestilence deemed to have subsided.

Laws of 1826, 12, § 1 & 2.

§ 18. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this state, shall, in the following cases, be as follows:

Damages on non-payment of bills.

TITLE 2.

Bills on certain northern and western states.

1. If such bill shall have been drawn upon any person or persons at any place in either of the states of Maine, New-Hampshire, Vermont, Massachusetts, Rhode-Island, Connecticut, New-Jersey, Pennsylvania, Ohio, Delaware, Maryland or Virginia, or in the district of Columbia, three dollars upon the hundred, upon the principal sum specified in such bill;

On certain southern and western states.

2. If such bill shall have been drawn upon any person or persons at any place in either of the states of North-Carolina, South-Carolina, Georgia, Kentucky or Tennessee, five dollars upon the hundred, upon the principal sum specified in such bill:

On other states and places on this continent, &c.

3. If such bill be drawn upon any person or persons at any place, in any other state or territory of the United States, or at any other place on, or adjacent to, this continent and north of the equator, or in any British or other foreign possessions in the West Indies, or elsewhere in the Western Atlantic ocean, ten dollars upon the hundred, upon the principal sum specified in such bill:

Laws of 1819, 34.

Bills on Europe.

4. If such bill shall have been drawn upon any person or persons at any port or place in Europe, ten dollars upon the hundred, upon the principal sum specified in such bill.

3 How. P. R., 60.

Damages to be in lieu of certain interest, charges, &c.

§ 19. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment, shall have been given, and payment of such principal sum, shall have been demanded.

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No reference to rate of exchange when bill payable in money of U. States.

§ 20. If the contents of such bill be expressed in the money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined, without any reference to the rate of exchange, existing between this state and the place on which such bill shall have been drawn, at the time of the demand of payment, or of notice of non-payment.

Laws of 1819, 34.

Otherwise when payable in foreign currency.

§ 21. If the contents of such bill be expressed in the money of account or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

2 Hilt., 83.

Damages on non-acceptance of bills.

§ 22. Where a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance, as provided in the four last

sections; and shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

§ 23. The damages allowed by this Title, shall be recovered only by the holder of a bill who shall have purchased the same, or some interest therein, for a valuable consideration.

Who to recover such damages.

Act concerning the Revised Statutes, passed December 10, 1828, § 15, subdivision 30.

See Laws of 1835, ch. 141; 1849, ch. 261; 1857, ch. 416.

TITLE III.

OF THE INTEREST OF MONEY.

- SEC. 1. Rate of interest to continue at seven per cent.
 2. Prohibition against taking greater interest.
 3. Persons paying greater interest may recover it back.
 4. When superintendents and overseers of poor may recover excess.
 5. Contracts, &c. for greater rate, void; except negotiable instruments in certain cases.
 6. Offenders compelled to answer bills of discovery.
 7. Discovery and return of excess, to exonerate from further penalty.
 8. Party filing bill not to pay interest on sum loaned; nor to pay principal.
 9. How months and days to be considered in casting interest.
 10. Interest to be calculated by the year, when no time is stated.

§ 1. The rate of interest upon the loan or forbearance of any money, goods or things in action, shall continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time.

Seven per cent to be rate of interest.

1 R. L., 64, § 1 & 2; 12 N. Y., 223; 8 N. Y., 148; 3 N. Y., 502; 32 B., 559; 31 B., 255; 22 B., 118; 17 B., 454; 16 B., 531; 13 B., 343; 11 B., 80; 4 H., 224; H. & D., 65; 9 Ab., 124; 1 Du., 369; 1 W., 555; 22 How. P. R., 5; 20 How. P. R., 519; 16 How. P. R., 508; 15 How. P. R., 29; 7 J. C. R., 69; 6 J. C. R., 95, 313; 5 J. C. R., 134; 3 J. C. R., 395; 2 J. C. R., 182; 1 J. C. R., 537.

§ 2. No person or corporation shall, directly or indirectly, take or receive in money, goods or things in action, or in any other way, any greater sum or greater value, for the loan or forbearance of any money, goods or things in action, than is above prescribed.

(772) Greater interest prohibited.

21 N. Y., 219, 531; 14 N. Y., 94; 12 N. Y., 229; 9 N. Y., 243; 7 N. Y., 328, 367; 5 N. Y., 186, 317; 3 N. Y., 355; 13 B., 343; 5 B., 42; 2 B., 56; 1 B., 434, 632; 4 H., 211, 224; 1 D., 133; 3 W., 62; 2 Ed., 272.

§ 3. Every person who, for any such loan or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives, may recover in an action against the person who shall have taken or received the same, and his personal representatives, the amount of the money so paid or value delivered, above

Excess paid may be recovered back in one year.

TITLE 1.

the rate aforesaid, if such action be brought within one year after such payment or delivery.

23 N. Y., 276; 1 N. Y., 286; 11 B., 88; 10 B., 580; 5 B., 133; Cl. Ch., 16, 70, 442; 20 J. R., 290; 6 N. Y., 107; 3 N. Y., 345, 471.

When to be recovered by overseers of poor, &c.

§ 4. If such suit be not brought within the said one year, and prosecuted with effect, then the said sum may be sued for and recovered with costs, at any time within three years after the said one year, by any overseer of the poor of the town where such payment may have been made, or by any county superintendent of the poor of the county, in which the payment may have been made.

Contracts for greater sums void.

§ 5. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever (except bottomry and respondentia bonds and contracts), and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken or secured, or agreed to be reserved or taken, any greater sum or greater value, for the loan or forbearance of any money, goods or things in action, than is above prescribed shall be void; but this act shall not affect such paper as has been made and transferred previous to the time it shall take effect.

14 N. Y., 93; 12 N. Y., 223, 495; 9 N. Y., 73, 241; 8 N. Y., 282; 7 N. Y., 328; 6 N. Y., 109, 134, 352; 5 N. Y., 178, 315; 4 N. Y., 226, 363, 463; 32 B., 559; 29 B., 403; 22 B., 118; 21 B., 181; 19 B., 584; 16 B., 548; 14 B., 146, 573; 13 B., 45, 339, 561; 12 B., 360; 11 B., 80; 10 B., 560; 9 B., 647; 5 B., 130; 1 H., 10, 564; 5 D., 240; 24 W., 115; 10 W., 116; 8 W., 533, 550; 7 W., 569, 256; 5 W., 595, 181; 4 W., 652, 679; 3 W., 408, 296, 62; 1 W., 555; 1 B. Ch., 43, 251; 2 Cow., 712; 19 J. R., 149; 5 Du., 468; 4 Du., 358, 408; 2 Du., 52, 509; 1 Du., 253; 15 How. P. R., 29; 1 R. L., 64; Laws of 1837, ch. 430.

Offenders compelled to discover.

§ 6. Every person offending against the provisions of this Title, shall be compelled to answer on oath any bill that may be exhibited against him in the court of chancery, for the discovery of any sum of money, goods or things in action so taken, accepted or received, in violation of the foregoing provisions, or either of them.

1 R. L., 64, § 4.

Discovery, &c., to bar further penalty.

§ 7. Every person who shall discover and repay or return the money, goods or other thing so taken, accepted or received, or the value thereof, shall be acquitted and discharged from any other or further forfeiture, penalty or punishment, which he may have incurred, by taking or receiving the money, goods or other thing so discovered and repaid, or returned as aforesaid.

Borrower filing bill not to pay interest on sums loaned.

[773]

Not to pay principal borrowed,

§ 8. Whenever any borrower of any money, goods or things in action, shall file a bill in chancery for a discovery of the money, goods or things in action, taken or received, in violation of either of the foregoing provisions, it shall not be necessary for him to pay, or offer to pay, any interest whatever on the sum or thing loaned; nor shall any court of equity require or compel the payment or deposit, of the principal sum, or any part thereof, as a condition of granting

relief, to the borrower, in any case of a usurious loan forbidden by this Chapter.

30 B., 627; 7 H., 393; 11 W., 329; 10 Pal., 588; 3 Pal., 531; 543; Cl. Ch., 482; 10 W., 113; 2 N. Y., 131; 6 N. Y., 107.

§ 9. For the purpose of calculating interest, a month shall be considered the twelfth part of a year, and as consisting of thirty days; and interest for any number of days, less than a month, shall be estimated by the proportion, which such number of days shall bear to thirty.

Months and days how to be reckoned.

§ 10. Whenever, in any statute, act, deed, written or verbal contract, or in any public or private instrument whatever, any certain rate of interest, is or shall be mentioned, and no period of time is stated for which such rate is to be calculated, interest shall be calculated at the rate mentioned, by the year, in the same manner as if the words "per annum" or "by the year," had been added to such rate.

How interest to be calculated in certain case.

See Laws of 1837, ch. 430; 1850, ch. 172; and 7 Pal., 600; 6 Pal., 161; 20 W., 611; 24 W., 360; 3 H., 564; 4 H., 35, 119, 468, 567; 5 H., 523, 547, 608.

TITLE IV.

OF ACCUMULATIONS OF PERSONAL PROPERTY, AND OF EXPECTANT ESTATES IN SUCH PROPERTY.

- SEC. 1. How long absolute ownership of personal property may be suspended.
2. Other limitations or future interests, &c., subject to first Chapter of this Part.
 3. For what periods accumulations of interest, &c., may be directed.
 4. All other directions for accumulation to be void; but in one case, void in part only.
 5. When monies accumulated, &c., may be applied to support, &c., of minor.

§ 1. The absolute ownership of personal property shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition; or if such instrument be a will, for not more than two lives in being at the death of the testator.

Suspension of ownership of personal property.

Act concerning Revised Statutes, passed December 10, 1828, § 15, subdivision '31; 6 N. Y., 322; 13 N. Y., 280; 8 N. Y., 531; 7 N. Y., 242; 32 B., 501; 27 B., 394; 15 B., 145; 10 B., 388; 9 B., 344; 7 B., 226, 596; 4 B., 88, 282; 2 B., 470; 7 Pal., 521; 4 Pal., 342; 3 Pal., 30; 2 S. Ch., 377; 2 Ed., 496, 561; 24 W., 641; 3 B. Ch., 355.

§ 2. In all other respects, limitations of future or contingent interests in personal property, shall be subject to the rules prescribed in the first Chapter of this Act, in relation to future estates in lands.

Certain other limitations.

13 N. Y., 273; 28 B., 145, 193; 25 B., 136; 10 B., 388; 4 Pal., 342; 1 S. Ch., 342; 18 How. P. R., 54; 7 Pal., 230, 534; 3 B. Ch., 93.

§ 3. An accumulation of the interest money, the produce of stock or other income or profits arising from personal pro-

Accumulations of interest, &c.

TITLE 4.

For what
period
when com-
mencing
from date of
instrument
&c.

[774]

For what
period
when com-
mencing
subsequent
to date of
instrument
&c.

perty, may be directed by any instrument sufficient in law to pass such personal property as follows :

1. If the accumulation be directed to commence from the date of the instrument, or from the death of the person executing the same, such accumulation must be directed to be made for the benefit of one or more minors then in being, or in being at such death, and to terminate at the expiration of their minority :

2. If the accumulation be directed to commence at any period subsequent to the date of the instrument, or subsequent to the death of the person executing such instrument, it must be directed to commence within the time allowed in the first section of this Title, for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and must terminate at the expiration of their minority.

15 N. Y., 325; 8 N. Y., 531; 7 N. Y., 257; 81 B., 82; 30 B., 128; 15 B., 139; 2 B., 248; 3 B. Ch., 92; 5 Pai., 480; 4 Pai., 328; 2 S. Ch., 474; 16 How. P. R., 352; 2 B. Ch., 518.

When other
directions
wholly void
When void
in part.

§ 4. All directions for the accumulation of the interest, income or profit of personal property, other than such as are herein allowed, shall be void ; but a direction for an accumulation, in either of the cases specified in the last section, for a longer term than the minority of the persons intended to be benefitted thereby, shall be void only as respects the time beyond such minority.

4 B., 282; 7 B., 590, 226; 30 B., 128; 3 B. Ch., 92; 5 Pai., 480; 8 Pai., 128; 7 N. Y., 257; 8 N. Y., 538; 16 N. Y., 322.

When part
may be ta-
ken for ed-
ucation,
&c., of
minor.

§ 5. When any minor, for whose benefit a valid accumulation of the interest or income of personal property shall have been directed, shall be destitute of other sufficient means of support or of education, the chancellor, upon the application of such minor or his guardian, may cause a suitable sum to be taken from the monies accumulated or directed to be accumulated, and to be applied to the support or education of such minor.

8 N. Y., 538.

See Laws of 1830, ch., 179, as to Factors, and 1838, ch. 257, as to Compromises with Partners.

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